

AMENDED AND RESTATED COOPERATIVE AGREEMENT

THIS AMENDED AND RESTATED COOPERATIVE AGREEMENT (“Agreement”), effective the date of execution, is made by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the state of Colorado (the “City”) and DENVER BOTANIC GARDENS, INC., a Colorado non-profit corporation (“THE GARDENS”), referred to herein jointly as the “Parties” and individually as a “Party”.

WITNESSETH:

WHEREAS, THE GARDENS was organized and incorporated, not-for-profit, on February 3, 1951, for the purpose of, among other things, to promote, establish and maintain Denver Botanic Gardens and associated arboreta; for the collection and culture of plants, flowers, shrubs, tree and other similar plants, the advancement of botanical science, knowledge and education and the prosecution of original research therein and in related subjects; for affording inspection in the same and for the study and execution or ornamental and decorative horticulture and gardening; and for the entertainment, recreation and instruction of people; and

WHEREAS, under the terms and conditions of a February 28, 1951 agreement, which was amended and restated by a cooperative agreement entered into on or about April 5, 1991, and amended as of June 26, 1995 by the First Amendment to Cooperative Agreement; July 26, 2005 by the Second Amendment to Cooperative Agreement; November 12, 2008 by the Third Amendment to Cooperative Agreement, and January 31, 2017 by the Fourth Amendment to Cooperative Agreement, THE GARDENS has established, maintained, managed, and operated the City’s botanic gardens, arboretum and parking facility located at Ninth Avenue and York Street, Denver, Colorado (“Denver Botanic Gardens”) and other facilities that are beyond the scope of this Agreement; and

WHEREAS, under the authority granted by Section 2.4.4(A) and (F) of the Charter of the City and County of Denver, the Executive Director of the Denver Department of Parks and Recreation (the “Executive Director”), subject to approval by City ordinance, is authorized to conduct negotiations for cooperative agreements with private agencies for the development of park and recreational facilities, programs and activities and for the establishment and maintenance of botanical gardens, and other facilities for use and enjoyment by the residents of the City and the general public, and to delegate the Executive Director’s authority and responsibility with respect thereto; and

WHEREAS, the use of City facilities is restricted by Financing Obligations, including but not limited to Bond Ordinances, Certificates of Participation (collectively the “Financings”), and by all associated laws and regulations and that THE GARDENS shall not jeopardize the tax-exempt status of the Financings, and as a result the Cooperative Agreement shall be approved by the City’s Bond Counsel and Special Counsel prior to execution; and

WHEREAS, by virtue of its purposes, interests and expertise, THE GARDENS continues to be experienced and appropriately suited and continues to desire to administer, maintain, plan manage and operate the Denver Botanic Gardens, including the parking facility, exhibits, and ancillary facilities on property owned or leased by the City; and

WHEREAS, the City and THE GARDENS wish to amend and restate the April 5, 1991 agreement, as amended, in the best interest of the City and THE GARDENS and the City's Denver Botanic Gardens for the enjoyment and benefit of the residents of the City; and

WHEREAS, THE GARDENS has assured the City that it will undertake to administer, maintain, plan, manage and operate the Denver Botanic Gardens, and it is within THE GARDENS means to contribute plant life exhibits, structures and improvements, along with the time and effort in the development and expansion thereof; and

NOW, THEREFORE, in consideration of the above and for the purpose of setting forth the relationship between THE GARDENS and the City with respect to the City's Denver Botanic Gardens and any related facilities, it is mutually agreed by the City and THE GARDENS as follows:

1. ENGAGEMENT AND PURPOSE.

(a) This Agreement shall replace, supersede, amend and restate, in its entirety, the cooperative agreement between the Parties dated April 5, 1991, as was previously amended as set forth in the preceding Recitals.

(b) Bond and other Financing. In accordance with certain applicable Financings of this City facility and related obligations and agreements, this Cooperative Agreement must be and has been approved by the City's Bond and Special Counsel, as set forth in the attached **Exhibit A**. It is understood that the use of City facilities is restricted by the Ordinances approving the Financings, and by all applicable rules, regulations, statutes or ordinances promulgated by any federal, state or municipal agency having jurisdiction over the City facilities. The Parties agree that the Financing Ordinances permit the terms of the Cooperative Agreement as written and that (a) THE GARDENS shall comply with this Cooperative Agreement, which allow compliance with all IRS regulations, and the Financing Obligations, to the extent applicable to the Denver Botanic Gardens, and will take no action that would jeopardize the tax-exempt status of the Bonds or Certificates contemplated by the Financing Obligations; (b) the City has obtained an opinion of and approval from Bond Counsel or Special Counsel that this Agreement is in all respects in compliance with the Financing Obligations, as set forth in **Exhibit A**; and (c) THE GARDENS agrees that in its activities and occupancy hereunder it will comply with all of the terms and conditions of this Cooperative Agreement which conforms with the Financings as those requirements are stated in this Cooperative Agreement and that it will take no action, nor fail to act in any manner, which would cause the City to breach or be in default under the Financings. THE GARDENS agreements or contracts may be subject to approval by Bond Counsel or Special Counsel.

2. DEFINITIONS.

(a) **"City"** shall mean City and County of Denver.

(b) **"Executive Director"** shall mean the Executive Director (defined by the Charter as the "Manager") of the City and County of Denver Department of Parks and Recreation consistent with definitions in the City and County of Denver Charter and Executive Order 140 (as such position or title shall change from time to time). Executive Director shall include the Manager's or Executive Director's designee.

(c) “**Facilities**” shall mean the City property operated as Denver Botanic Gardens, all buildings including the parking facility, grounds, plantings, collections, exhibits, and properties located at 1007 York Street or used in connection therewith, for the enjoyment and education of the public. “Facilities” shall consist of all fixtures and permanent improvements presently existing, or as may be constructed, expanded, or renovated in the future, on, below or above the ground within the boundaries of Denver Botanic Gardens as depicted in **Exhibit B**, attached hereto and incorporated herein by reference. For purposes of this definition, “**Fixtures**” shall be defined as those improvements or installations attached to the Facilities, whether interior or exterior, or other structural portions or components of the buildings, including mechanical systems and electrical systems, and that cannot be removed without altering the building or structural components. The physical boundary of the Facilities shall not be expanded onto property owned or leased by the City without the approval of the Executive Director. The term Facilities shall not include personal property owned by THE GARDENS as set forth in Paragraph 18 hereof.

(d) “**Financing Obligations**” shall mean all applicable agreements, contracts, covenants, rules, regulations, statutes, and ordinances, promulgated by any federal, state or municipal agency having jurisdiction over the Facilities; and all bond agreements, indentures and related agreements that affect the Facilities, including but not limited to the Lease Purchase Agreement No. 2017A dated as of February 16, 2017 between Denver Botanic Gardens Parking Facility Leasing Trust 2017A and the City and County of Denver (which amends and restates the Lease Purchase Agreement dated November 12, 2008)(the “**2017A Lease**”), establishing the Denver Botanic Gardens Parking Facility Leasing Trust (referred to in this Agreement as “Trust” or “2017A Trust”). Additional terms, conditions and obligations regarding 2017A Lease and Trust are set forth in **Exhibit C, “Parking Facility Trust Lease, Operation, Maintenance and Reporting”**, and are hereby incorporated by reference into this Agreement as material terms and obligations of the Agreement.

(e) “**THE GARDENS**” shall mean the non-profit corporate entity “Denver Botanic Gardens, Inc.”

(f) “**Material Change**” shall mean, with respect to the Facilities, structural changes, improvements, additions or construction (including major modifications, additions, or renovations) to Facilities; and structural changes or other improvements to the Facilities, or additions not contemplated by an approved master plan that will result in an exterior visual impact outside the boundaries of Denver Botanic Gardens, all of which shall require City approval as defined in this Agreement; but excluding any changes or improvements to collections, plantings, horticultural exhibits, or landscaping; and excluding any Repairs and Maintenance to such Facilities, buildings or improvements. Material Change shall not include, regardless of the cost (i) decisions made and actions taken by THE GARDENS in the normal course of maintaining, managing, and operating the Facilities or Denver Botanic Gardens; (ii) decisions in implementing, interpreting or applying an existing master plan; (iii) actions to repair facilities damaged by storms, unforeseen natural causes that could not be prevented, or other causes beyond the control of the Parties, or Emergencies as defined in Paragraph 11(b); or (iv) planting, replanting, relocation or establishment of a specialized garden with the Facilities.

3. RELATIONSHIP OF THE PARTIES.

(a) THE GARDENS' responsibilities and obligations to the City shall be as set forth herein. THE GARDENS shall act as a fiduciary to the City and shall take no action in conflict with City, state or federal law, rule or regulation; or that would compromise or undermine any Financing bond, certificate, or other financial obligation or security of the City, or results in a breach of any bond, certificate financing or security agreement of the City.

(b) City hereby retains THE GARDENS as a non-profit entity and, as applicable, as a qualified manager, to administer, plan, maintain, manage, and operate the Facilities, and THE GARDENS hereby accepts such engagement on the terms and conditions set forth herein according to standard practices for the maintenance and operation of botanic gardens in the United States. None of the rights herein granted to THE GARDENS is, nor shall they be construed to be, a lease, easement, or other ownership interest in real property of the Facilities owned by the City. THE GARDENS hold no interest in any City-owned real or personal property.

(c) Without limiting its obligation to operate and maintain the City's Denver Botanic Gardens, THE GARDENS shall encourage public use and enjoyment of Denver Botanic Gardens, to increase its membership support base, to perform its obligations under this Agreement in order to achieve the public purpose of this Agreement in accordance with its terms, and to secure contributions of whatever type to support the purposes of the City and Denver Botanic Gardens. THE GARDENS may, after consultation and agreement from the City and subject to any conditions imposed by the City, accept or refuse gifts made to or for the benefit for the City, or made to or for the benefit of the Denver Botanic Gardens or the Facilities, any of which shall require approval by the City. If the gift is approved the gift shall become the property of the City. For clarity, this paragraph does not affect gifts made to THE GARDENS as charitable contributions that are not, under the terms of this Agreement, intended to be transferred to the City.

(d) The public purpose of this Agreement is to provide for the establishment and maintenance of Denver Botanic Gardens, and any related operations and activities, for the use and benefit of the people of the City and the general public through public or private cooperation between the City and THE GARDENS in conformance with § 2.4.4 of the Charter of the City and County of Denver.

(e) The City has entered, and may enter in the future, into agreements setting forth conditions, requirements, rights and obligations on the part of the City and THE GARDENS with respect to the Facilities and portions thereof including, without limitation, the Parking Facility at Denver Botanic Gardens. THE GARDENS acknowledges that it has received and fully read these agreements. The Parties hereby agree and covenant to take or avoid actions, as appropriate, to assure that such agreements are fully complied with and no default or breach is caused under these agreements. These agreements are incorporated herein by this reference and listed in Paragraph 2(d) and Exhibit C, unless stated otherwise.

4. COOPERATIVE STATEMENT.

(a) THE GARDENS and the City acknowledge that the following is an accurate summary of the basis for this Agreement:

Denver Botanic Gardens is owned by the City and County of Denver and maintained by Denver Botanic Gardens, Inc. for the people of the City and County of Denver and for the general public in cooperation with the Denver Parks and Recreation Department.

(b) For purposes of fundraising materials and other publications where a shortened version of the cooperative statement is more appropriate, it is understood that the following version of the cooperative statement may be used in lieu of that set forth above:

In cooperation with the City and County of Denver, Department of Parks and Recreation.

(c) THE GARDENS shall include the foregoing statement (or such modification thereof as the Executive Director shall approve or disapprove within fifteen (15) calendar days of receipt, which approval shall not unreasonably be withheld, so long as it meets the intent and purpose of the Cooperative Statement) in documentation and postings at the Facilities where it is appropriate to acknowledge the nature of the relationship, and on letterhead, annual reports, websites, newsletters, guides to the Facilities, signs, and other materials distributed generally by THE GARDENS. It is understood that THE GARDENS may, from time to time, be expected or obligated to include other statements of support and cooperation (e.g., by the Scientific and Cultural Facilities District or specific donors) and THE GARDENS may combine the above statement with such other statements of support and cooperation.

5. TERM. This Amended and Restated Agreement shall commence as of its date of execution and shall terminate on December 31, 2073, unless otherwise terminated or extended as provided herein (the “Term”) and on January 1st of each succeeding year, the Term shall automatically (and without further action of the Parties) extend for an additional one (1) year period, unless and until either the City or THE GARDENS, at their sole and independent discretion, give written notice to the other Party by September 1st of the year to terminate this Agreement in the manner set forth in “Notices”, below.

6. APPLICABLE LAW. THE GARDENS shall comply with all federal, state and local laws, ordinances, rules and regulations that are applicable to its operations of the Facilities. Except as may be specifically provided herein, THE GARDENS may be required as directed by the City to comply with rules, regulations, or directives applicable to (a) the operation and management of Department of Parks and Recreation facilities and City facilities; or (b) contracts entered into by the City. THE GARDENS may also implement and enforce its own rules and regulations applicable to the operation and management of the Facilities, so long as THE GARDENS rules and regulations do not conflict with City laws, ordinances, rules or regulations.

7. PERSONNEL.

(a) All employees presently engaged by THE GARDENS and all employees hired by THE GARDENS to work at the Facilities after the effective date of this Agreement shall be employees of THE GARDENS only and shall not be considered to be employees of the City.

(b) THE GARDENS shall provide the Executive Director a copy of its current personnel rules and regulations and code of ethics for its employees in the Annual Report as specified in Paragraph 28.

(c) THE GARDENS shall maintain a policy of actively encouraging diversity within members of its work force, at all levels, and it shall continually strive to achieve diversity among said work force throughout the term of this Agreement.

8. RESPONSIBILITIES FOR MAINTENANCE AND EXHIBITS. THE GARDENS shall maintain the Facilities and Fixtures in safe condition and good repair. This obligation applies regardless of whether the City makes available to THE GARDENS funds for this purpose. THE GARDENS shall have exclusive control, responsibility, and discretion over the selection, development, and arrangement of all plantings, exhibits and collections of plants, and the creation, naming, and placement of all acknowledgments, memorials, and works of art located in the Facilities, except as otherwise provided in this Agreement. Naming of any Facilities or Fixtures shall require advance approval of the Executive Director which approval shall not be unreasonably conditioned, withheld or deferred, subject to Department of Parks and Recreation rules and regulations. The exercise of such rights shall not violate any bond, certificate or any Financing Obligations.

9. MASTER PLANS.

(a) Approvals of Master Plans. The Denver Botanic Gardens Master Plan, including all phases thereof, any future Master Plan or amendment thereto for improvements or major programmatic strategies that may be developed by THE GARDENS, and any Material Change to any such Master Plan shall be submitted to the Executive Director for review and approval in advance of adoption of such plan or change by THE GARDENS (“Master Plans”). Design or construction related to a Master Plan may require approval in accordance with Paragraph 11. It is understood that, while THE GARDENS is not obligated to adopt a Master Plan, any major programmatic strategies for the operation or use of the Facilities not contemplated by an adopted Master Plan must be approved in advance by the Executive Director of Parks and Recreation.

(b) THE GARDENS shall give the Executive Director, and to the extent required by this Agreement, the Neighborhood Advisory Committee, notice of any Master Plan or Material Change in any Master Plan and shall provide a reasonable opportunity to the Neighborhood Advisory Committee and the Executive Director to participate in the development of the Master Plan or Material Change. In addition to any approval, including City Council approval, or other review or public comment as required by law or ordinance, the Executive Director shall within its reasonable discretion, within ninety (90) days after submission by THE GARDENS of any such proposed Master Plan or Material Change, either approve or disapprove the Master Plan, either in whole or in part, provided that any disapproval shall be accompanied by a written statement of the specific reasonable basis therefor. For purposes of this subparagraph (b), a Material Change to a Master Plan shall include any written statement of the reasons for the Material Change. The Parties acknowledge and agree that THE GARDENS shall not be obligated to prepare a Master Plan at any time.

(c) Proposed new plans for events, operations, rentals, or use of the Facilities not contemplated by a previously approved Master Plan (excluding educational programs and classes), and anticipated to (i) exceed 4,000 guests per day, or (ii) that may contribute significantly to increased traffic congestion, parking or other potentially adverse impacts on surrounding

neighborhoods, shall be submitted to the Executive Director for review one hundred twenty (120) days prior to the proposed event rental or use. The Executive Director or Executive Director's designee shall approve or disapprove, in writing, the proposed plan, either in whole or in part, stating any reason(s) for any disapproval, within thirty (30) calendar days of submittal. The City is entitled to reasonable extensions of any deadlines set forth in this Paragraph 9(c). Upon request, THE GARDENS shall submit public outreach or communications plans for major events that affect the immediately surrounding neighborhood or community. If no new type, level, or category of events were proposed for the preceding year, THE GARDENS shall indicate such in the Annual Report.

10. PLANNING AND REPORTING REGARDING PROJECTS. The City and THE GARDENS shall meet at least once per year to review any proposed improvements under a Master Plan, proposed projects that involve Capital Improvement Projects ("CIP") funds, and other proposed projects, construction, or improvements to discuss procurement methods and options for each project. Upon request by the City, THE GARDENS shall provide copies of any communication or outreach plans for individual proposed projects.

(a) Completed Projects. THE GARDENS shall provide in the Annual Report a comprehensive report of projects completed in the preceding year, including but not limited to project descriptions and total dollar expenditures for any work under Paragraph 11. THE GARDENS shall provide copies of as-builts, if applicable, for any project or Material Change upon completion of the project, or as otherwise requested by the City.

(b) Emergencies. In the event of an existing or imminent emergency where City property, THE GARDENS' property, employees, visitors, guests, or neighboring property or residents are at substantial risk, due to unsafe or unhealthy conditions in or at the Facilities, either Party is authorized, without prior notice to the other, to take such prompt and prudent measures as necessary to secure, protect, and preserve the property at risk. Either Party is authorized to perform that amount of emergency work reasonably necessary to abate the emergency. The work need not exceed what is necessary to eliminate the immediate danger or risk. Notice shall be provided as soon as reasonably possible to the other Party as to reasons for the emergency work, the time, place, and manner of the emergency work, and the costs incurred due to the emergency work. The respective Party shall be responsible for all costs it incurs for emergency responses and associated work it performs.

11. IMPROVEMENTS; CONSTRUCTION.

(a) Review and Comment Required; Improvements. THE GARDENS shall submit proposed scope of work, concept plans, specifications or any other project information for the projects described in this Paragraph 11 to the Executive Director at least sixty (60) calendar days prior to the initiation of design of the project unless emergency conditions necessitate immediate repair or replacement. The Executive Director or Executive Director's designee, acting reasonably, shall review and comment within thirty (30) calendar days of submittal. The City is entitled to reasonable extensions of any deadlines set forth in this Paragraph 11(a). Any deadlines set forth in this Paragraph 11 shall not extend beyond an additional ninety (90) calendar days. Failure by the Executive Director to timely respond shall be deemed a waiver of the Executive Director's right to review the project. Subject to the City's decision and reasonable discretion, the City reserves the right to require an Assignment Agreement upon review of projects under this

subparagraph (a). THE GARDENS shall submit plans and specifications for review and comment, prior to initiation of design, for the following types of projects:

(i) Design and construction of any permanent, non-habitable structures or installations, except for:

1. Buildings which require review and approval under subparagraph (b), below.

2. Structural improvements which result in a visual impact when viewed from the exterior of the Facilities, in which case written approval is required under subparagraph (b); and

(ii) Interior renovations, excluding furniture, fixtures, equipment not permanent in nature and other renovations that meet the requirements of 11(d).

Review and comment requirements shall be subject to DPR procedures.

(b) Review and Approval Required; Assignment Agreement. For projects proposing design, planning, construction, reconstruction, or remodeling of buildings, building additions, renovations, installation of fixtures, and other permanent improvements, or for the demolition of any buildings (except as regarding the Parking Facility, which is subject to **Exhibit C**) for the following types of construction improvements, described below, the concept and preliminary designs shall be submitted to the Executive Director at least ninety (90) calendar days prior to initiation of the design process. Once THE GARDENS has procured design services and develops design plans and specification, the Executive Director shall approve or disapprove, in writing, providing the reasonable basis for such approval or disapproval, the plans and specifications, either in whole or in part, stating any reason(s) for any disapproval, within sixty (60) calendar days of submittal to the City. The City is entitled to reasonable extensions of any deadlines set forth in this Paragraph 11(b). Any deadlines set forth in this Paragraph 11 shall not extend beyond an additional ninety (90) calendar days. Failure by the Executive Director to timely respond shall be deemed a waiver of the Executive Director's right to review the project. Any deficiencies in said plans and specifications shall be remedied by THE GARDENS to the reasonable satisfaction of the Executive Director prior to the commencement of work. The City's reviews of plans and specifications shall be conducted at the City's cost without prejudice to any fees required by other City agencies, ordinances, rules, regulations, or laws. THE GARDENS shall obtain prior written approval on plans and specifications for the following types of construction improvements:

(i) Material changes under any approved Master Plan or resulting in structural changes, improvements, additions, new buildings, major modifications or renovations that alter the design character and aesthetic, alter public access and connectivity or alter mass, scale and density of the buildings in Denver Botanic Gardens, (excluding interior renovations and furniture, fixtures and equipment) to existing Facilities;

(ii) Structural modifications, additions, improvements or renovations, which will result in an exterior visual impact outside of the boundaries of the Denver Botanic Gardens and that alter the design character and aesthetic, alter public access and connectivity or

alter mass, scale and density of the buildings in Denver Botanic Gardens, excluding exhibits or collections not permanent in nature;

(iii) Projects utilizing Capital Improvement Project (“CIP”) funds or funds for maintenance provided by the City; and

(iv) Projects utilizing municipal lease purchase or bond financing issued by or on behalf of the City, subject to additional terms and conditions of separate funding agreements.

(c) Review and approval requirements shall be subject to Denver Department of Parks and Recreation procedures. Subject to the Executive Director’s discretion, the City may either approve the project in writing and/or assign authority to THE GARDENS through an Assignment Agreement, for the types of projects described above in Paragraphs 11(a) or 11(b) subject to reasonable conditions to comply with City Code, ordinances, rules, regulations policies or contractual requirements.

(i) All costs incident to the work be borne solely by THE GARDENS, unless otherwise provided for by separate agreement, appropriation or authorization. In addition to THE GARDENS’ moneys, any funds received from the Scientific and Cultural Facilities District may be used, provided that such expenditure is in conformance with the requirements of the Scientific and Cultural Facilities District Act, C.R.S., §§ 32-13-101 *et seq.*

(ii) Where applicable, THE GARDENS and its contractors and subcontractors, in the execution of contracts and in work shall observe and comply with the provisions of the Denver Revised Municipal Code (“D.R.M.C.”) pertaining to the payment of prevailing wages, payment of minimum wage, minority and women business enterprise participation, small business enterprise participation, the public art program, and non-discrimination and equal employment opportunity, as such provisions may be amended or recodified from time to time. In addition, THE GARDENS and its contractors and subcontractors shall observe and comply with the provisions of the City’s Building Code, Fire Code, and other applicable health and safety requirements and shall obtain, and pay for, any licenses and permits required by law. To the extent applicable, THE GARDENS shall conform with the requirements of the federal Americans with Disabilities Act and any other federal or state laws requiring access for the disabled to public accommodations.

(iii) THE GARDENS and its contractors and subcontractors shall pay all applicable sales and use taxes levied by governmental entities on any tangible personal property built into or incorporated into the work. Upon request by the City, an itemized and certified statement, including the names and addresses of the suppliers, the amount of such taxes, and the dates of payment, shall be furnished to the City.

(iv) THE GARDENS, or THE GARDENS’ contractors, shall obtain a payment and performance bond or other guarantee acceptable to the City Attorney’s Office, conditioned that THE GARDENS or its contractors shall promptly make payment of all amounts lawfully due to all contractors, subcontractors, and persons furnishing labor or materials or labor

and materials used or performed in the prosecution of the work, and shall indemnify the City to the extent of all payments in connection with performing the work.

(v) THE GARDENS shall observe and abide by all other requirements of this Agreement applicable to construction projects, including but not limited to the provisions related to audits, indemnification, liens, non-discrimination, and subcontracting.

(vi) THE GARDENS shall be solely responsible for assuring that any project initiated under this Paragraph 11, whether or not by Assignment Agreement, is properly contracted and performed and that the work performed and materials used are in conformance with any applicable laws (local, state, and federal) that govern the performance of such work.

(d) No Review or Approval Required. THE GARDENS may perform, or contract for, the following improvements at the Facilities without City review or approval so long as such work is not subject to Paragraph 9 or Paragraphs 11(a) and 11(b), and so long as the resultant work creates no visual impact on the Facilities when viewed from streets adjacent to the Denver Botanic Gardens. Improvements subject to this Paragraph 11(d) include, but are not limited to:

(i) Projects under \$250,000, unless they meet the requirements of sections 11(a) or 11(b). The \$250,000 threshold can be adjusted in accordance with DPR procedures regarding capital improvements at the Facilities and may be based on the United States Department of Labor Statistics Consumer Price Index for All Urban Consumers, or other mutually agreeable method;

(ii) Repair, maintenance or replacement of existing improvements not altering design character or aesthetic, and not requiring structural engineering or design work of a structural nature;

(iii) The installation of any Fixtures and non-structural items, furniture and equipment purchasable through a catalog;

(iv) Installation, repair, maintenance or replacement of Fixtures and nonstructural items, including but not limited to fencing, railings, movable sheds, signs, bathroom fixtures, water features, water fountains and lighting, and other improvements resulting in like-for-like repair, maintenance or replacement; and

(v) Design, construction, reconstruction, expansion or remodeling of the gardens, collections, exhibits, plantings, landscaping, or similar non-permanent, non-structural facilities intended for botanical or horticultural exhibits. Notwithstanding Paragraph 11(d), above, Projects for the installation of plantings and landscaping visible from the exterior do not require City review or approval.

(e) Prior to the initiation of design, THE GARDENS shall notify the City of other improvements not specifically addressed in Paragraph 11.

(f) The City may from time to time develop standard operating procedures or other procedures or practices for construction and other project approaches for work at the

Facilities. When indicated, THE GARDENS shall be required to conform to and follow the procedures and practices.

12. CITY ACCESS; PUBLIC USE OF FACILITIES.

(a) In no case shall THE GARDENS prevent or limit right-of-entry at reasonable hours to any City inspector or other authorized agent of the City to the Facilities including to any worksite during work or construction, including but not limited to work performed under Paragraph 11, to conduct tests and evaluations as to the quality of the work performed and materials used, conformance with the plans and specifications, and compliance with all laws, local, state and federal, which govern the performance of such work. This right of reasonable entry includes entry for inspection of any work performed under Paragraph 11. If the City determines that the work is not being so performed, the City, including but not limited to the Executive Director of Parks and Recreation or the Executive Director of the Department of Transportation and Infrastructure, may order that THE GARDENS cease to conduct the work until there is satisfactory evidence that the work conforms to the approved plans and specifications.

(b) The Mayor, members of the City Council, the Executive Director, and other representatives of appropriate City departments shall, at all reasonable times, have access to the Facilities for the purposes of visitation and inspection.

(c) The areas within the Facilities that are designed and intended for public access, exclusive of administrative offices, service areas, glass houses and research areas, shall be open to the public on the days and within reasonable hours designated by THE GARDENS.

(d) THE GARDENS may designate the number of and eligibility for “free days”. THE GARDENS shall provide its current public access days and hours, number of “free days” at Denver Botanic Gardens, and any free day eligibility requirements in the Annual Report.

13. CONCESSIONS.

(a) THE GARDENS may provide or contract with third parties for the operation of concessions for selling food, drink, merchandise, rides, and such other related services, products, and events which THE GARDENS determines to be in character with the operation of a botanic garden. THE GARDENS shall submit any proposed concession agreement to the Executive Director prior to execution for review and approval.

(b) So long as there is outstanding tax-exempt financing for the Facilities, execution of an agreement for concessions is subject to City approval and approval by City’s Bond Counsel and Special Counsel. All such agreements shall contain a provision that the Executive Director may require THE GARDENS to terminate such concession agreement if the concessionaire fails to comply with applicable law or the terms of this Agreement, or fails to comply with the terms and conditions of bonds or certificates regarding tax-exempt financing. Failure to make such correction within ninety (90) days may result in cancellation of the concession agreement. This subparagraph shall not apply to caterers or other concessions for private events held at the City’s Denver Botanic Gardens to which THE GARDENS is not a party.

(c) THE GARDENS shall develop procedures for the competitive selection of concessionaires, which procedures shall specifically address the duration and types of concessions.

Such procedures shall be consistent with the City's Charter, municipal code, ordinances, Executive Orders, rules, regulations, policies, prevailing wage requirements, minimum wage requirements, and contracting procedures. THE GARDENS shall submit such selection procedures for review and approval by the Executive Director. The Executive Director shall provide any denial or approval within thirty (30) days. The Executive Director's failure to respond within the times set forth shall not constitute approval.

(d) THE GARDENS shall include copies of all newly executed concessionaire agreements and any amended agreements in the Annual Report. The Annual Report shall indicate any anticipated concessionaire agreements for the upcoming year; whether new agreements have been executed; whether existing agreements have been amended, modified or terminated; and whether any changes were made to THE GARDENS's procedures for competitive selection during the previous year, and shall include copies of any such changes.

14. EDUCATIONAL AND CULTURAL ACTIVITIES. THE GARDENS shall make every effort to cooperate with educational institutions in the Denver metropolitan area in the dissemination and research of botanical, horticultural and associated scientific information and knowledge. THE GARDENS shall afford access to the Facilities, to the extent its resources may permit and as may be compatible with the proper administration of the Facilities and the interests of the general public, to teachers and students in public or private schools and other institutions of learning who may be authorized by the institutions to bring students to the Facilities where, under the supervision of THE GARDENS, instruction may be given to such students, at such times and under such policies as may be determined by THE GARDENS. THE GARDENS may also permit the Facilities to be used for the presentation of artistic or cultural displays or performances not inconsistent with the use and protection of the botanical and horticultural collections and exhibits. THE GARDENS may impose reasonable charges for educational, cultural and other goods and services it might or will provide under the provisions of this paragraph.

15. FUNDING. The City recognizes that, in addition to any funds that THE GARDENS is able to raise from charitable contributions and other sources as permitted by law, THE GARDENS may need funding from additional sources to achieve and continue the public purpose of this Agreement. It is understood that neither the City nor THE GARDENS is hereby obligated to provide any specific level of funding for the purposes set forth in this Agreement, and if any Party for any reason reduces any funding previously provided, no other Party shall be obligated to increase its funding as a result thereof. Notwithstanding any provision to the contrary in this Agreement, THE GARDENS understands and acknowledges that the City's payment or funding obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. THE GARDENS acknowledges agrees and covenants to take or avoid actions, as appropriate, to assure that fundraising activities comply with the Financing Obligations. The Parties contemplate that the following sources of funding may be available to THE GARDENS from time to time.

(a) Appropriations made annually at the discretion of the City Council in such amounts as the City Council deems to be necessary or desirable to pay costs and expenses for the management, operation, maintenance, utilities, modification, and improvement of the Facilities,

which shall be used by THE GARDENS in the manner, and subject to any conditions, specified in the appropriation. Subject to such appropriations, the City contemplates that the appropriations will be at least sufficient to pay the cost of all utilities needed to operate Denver Botanic Gardens and the Facilities, including gas, electricity, water, sewer, and telephone service. THE GARDENS shall, consistent with the proper maintenance and the safety of the public, use reasonable efforts to conserve water and energy use consistent with the City's conservation policies.

(b) Fees for admission to the Facilities, which require prior City Council approval. THE GARDENS shall indicate in the Annual Report the intention to propose any new or changed admission fees, or indicate if THE GARDENS does not intend to propose any admission fee changes for the upcoming year. The Executive Director will submit such proposed changes together with the Executive Director's recommendation on the proposal, to City Council for approval.

(c) Fees for use of the Facilities, including room rentals within the Facilities, which require City Council approval, and which shall be collected and deposited by THE GARDENS in its accounts to be applied by THE GARDENS for management, operation, care, repair, and maintenance of the Facilities. As needed, upon submittal by THE GARDENS of any proposed fee changes to the Executive Director, the Executive Director will submit such proposed changes together with the Executive Director's recommendation on the proposal, to City Council for approval. THE GARDENS shall indicate in the Annual Report the intention to propose any new or changed use fees, or indicate if THE GARDENS does not intend to propose any use fee changes for the upcoming year.

(d) Revenues from concessions operated at the Facilities shall be collected and deposited by THE GARDENS in its accounts and used for the same purposes identified in subparagraph (c) above.

(e) Taxes collected pursuant to the provisions of the Scientific and Cultural Facilities District Act (C.R.S. § 32-13-101 *et seq.*) as revised, renewed or amended, shall, so long as THE GARDENS remains the agent of the City and is authorized to maintain, manage, and operate the Facilities, be received directly by THE GARDENS on behalf of Denver Botanic Gardens. No City or Scientific and Cultural Facilities District funds shall be used by THE GARDENS in connection with any activities prohibited by law or by regulation of such District.

(f) Gifts of money made to the City for and limited to the use and benefit of the Denver Botanic Gardens shall be deposited into the fund established by the City Treasury for the Denver Botanic Gardens and expended for the purposes provided in subparagraph (g) below.

(g) Unconditional gifts, donations, endowments, grants, bequests and devises from private donors and other governmental entities to THE GARDENS or benefactors of THE GARDENS, income earned by THE GARDENS on its investments, and operating net revenues received by THE GARDENS in the conduct of its programs and activities shall be received by THE GARDENS and expended for any purpose recognized under this Agreement, or for any purpose which may further the mission and purposes of THE GARDENS, subject to authorization by the Board of Trustees of THE GARDENS. THE GARDENS shall have the sole discretion to accept, reject, retain, liquidate, expend, invest or transfer THE GARDENS-owned assets which

THE GARDENS, in its reasonable judgment, believes will further the mission and purposes of THE GARDENS, except to the extent that the use of such assets may be restricted by donor.

(h) THE GARDENS shall have the right to apply for, accept and utilize, for the benefit and use of THE GARDENS and for the benefit of the Facilities, grants and other governmental or private financial assistance ("Grants"). THE GARDENS shall notify the City in advance of any grants benefitting the City, the Facilities, any programs and activities performed at the Facilities, or that obligate the City, as outlined in Paragraph 28(e). Any matching fund requirement of a Grant shall be the responsibility of THE GARDENS unless the City has approved the matching fund requirement in accordance with City ordinance and has appropriated its share of the matching funds. Any Grant which requires certain covenants, conservation easements, or other restrictions be imposed on the Facilities, in whole or part, as a condition of obtaining the Grant must be pre-approved by the City through the City's established contract process.

(i) Bond funds as may be authorized by the people and issued by the City in the amounts and for the purposes stated in an authorization ordinance may be available to THE GARDENS.

Each year, THE GARDENS shall submit its annual budget (including details of THE GARDENS, Scientific and Cultural Facilities District, and City sources of funds) for the upcoming year as part of its Annual Report.

16. GOVERNANCE OF THE GARDENS.

(a) THE GARDENS agrees to maintain the provisions of this Paragraph 16 in its bylaws and appropriate governance documents.

(i) THE GARDENS' bylaws shall provide that the Executive Director, or a designee selected by the Mayor, shall be a voting member of the Board of Trustees of THE GARDENS and shall serve as the representative of the City for all purposes on the Board of Trustees. When acting as a trustee, the Executive Director or the designee shall be subject to the same obligations, including without limitation, fiduciary and confidentiality obligations applicable to other trustees. Information received by the Executive Director or designee as a trustee shall be presumed to have been provided to the City unless such information is confidential by law or policy of THE GARDENS. If the Executive Director or designee determines that he or she faces a conflict of interest in serving as a representative of the City and in fulfilling obligations of trustees, the Executive Director or designee shall so inform the Mayor and the Chair of the Board of Trustees, who shall confer to find an acceptable resolution to such conflict.

(ii) THE GARDENS' bylaws shall provide that the Mayor shall appoint four voting term members of the Board of Trustees. The four Mayoral appointees shall reside within one mile of Denver Botanic Gardens (collectively, the "Mayoral Appointees") and shall each be appointed by the Mayor for a three-year term. A slate of candidates shall be submitted to the Mayor for consideration as follows. The Neighborhood Advisory Committee may nominate up to ten candidates for each vacant Mayoral Appointee position. After considering such list, the Board of Trustees of THE GARDENS shall present up to three candidates for each vacant position to the Mayor. The Mayor shall make the appointment of Mayoral Appointees in their sole discretion. Mayoral Appointees shall have all the powers and responsibilities of trustees but shall

have the additional responsibility of keeping the Neighborhood Advisory Committee informed to the extent that doing so does not violate their responsibilities as trustees, including responsibilities related to fiduciary matters and confidentiality. Mayoral Appointees under this Paragraph 16(a)(ii) shall not be considered representatives of the City.

(iii) THE GARDENS' bylaws shall provide that if the total number of voting members of the Board of Trustees of THE GARDENS is increased or decreased, the number of Mayoral Appointees shall also be proportionately increased or decreased, but in no event shall there be fewer than four Mayoral Appointees.

(iv) The Mayor and the City Council may recommend other persons for election to the Board of Trustees, but the election of such persons shall be in the sole discretion of the Board of Trustees.

(b) In addition to other required reports, THE GARDENS shall within a reasonable time prior to adoption, inform the Executive Director in writing of any proposed action by the Board of Trustees to change or amend the articles of incorporation, bylaws, or other material policy documents governing THE GARDENS, and shall also report such changes in the Annual Report. If no changes were made in the preceding year, THE GARDENS shall indicate such in its Annual Report.

17. NEIGHBORHOOD ADVISORY COMMITTEE.

(a) THE GARDENS shall establish a Neighborhood Advisory Committee comprised of up to 25 persons who shall be selected in the following manner. Each qualified neighborhood organization (a "Qualified Neighborhood Organization") as hereinafter defined shall be entitled to appoint up to three members of the Committee who shall serve at the pleasure of such organization. For these purposes, a Qualified Neighborhood Organization means (1) Morgan's Historic District Homeowners' Association, Denver East Central Civic Association, Capitol Hill United Neighborhoods, Inc., Congress Park Neighbors, Inc. and East Cheesman Area Residents Association, or their successors; (2) any neighborhood organization that has been recognized by the City as a "registered neighborhood organization," and a majority of whose members reside within one-half mile of Denver Botanic Gardens; and (3) any other neighborhood organization approved by the Mayor. Each of the Mayoral Appointees on THE GARDENS Board of Trustees shall each be an ex-officio non-voting member of the Neighborhood Advisory Committee. The City Councilperson for the Council District that includes Denver Botanic Gardens may, at the Councilperson's discretion, act as an ex-officio non-voting member of the Neighborhood Advisory Committee. Any member of THE GARDENS Board of Trustees may attend any meeting of the Neighborhood Advisory Committee.

(b) Meetings shall be held between representatives of the Neighborhood Advisory Committee and representatives of THE GARDENS at least once per year at times mutually agreed upon by them. THE GARDENS shall submit a summary of the meeting(s), including dates and attendees, as part of the Annual Report.

(c) The purpose and mission of the Neighborhood Advisory Committee is to:

(i) Inform THE GARDENS of significant neighborhood issues relating to Denver Botanic Gardens;

(ii) Gather and disseminate information to the neighborhoods surrounding Denver Botanic Gardens as to its activities and future plans; and

(iii) Participate in the nomination of Mayoral Appointees to THE GARDENS's Board of Trustees.

(d) The Neighborhood Advisory Committee shall be an advisory committee only and shall have no legal, policymaking or other authority binding on or within the City or THE GARDENS.

18. REAL PROPERTY, PERSONAL PROPERTY AND THE GARDENS COLLECTION.

(a) THE GARDENS hereby donates, gives, grants, conveys, and assigns to the City, for the use and benefit of the people of the City, all of its right, title, and interest in and to any fixtures and facilities, including Facilities and Fixtures under Paragraph 2(c), or other permanent improvements to real property that it now owns or may hereafter acquire during the term of this Agreement that are located on or in the Facilities. THE GARDENS shall not permanently construct, install, attach or affix anything on or in the Facilities that does not thereby become the property of the City pursuant to this subparagraph. The City recognizes that THE GARDENS owns and operates buildings, property and sites that are not within or a part of the Facilities, or within or on land owned or leased by the City, and therefore not considered to be part of the Facilities for purposes of this Agreement. Funding provided for the purposes and benefit of the Facilities or the City, including funding under Paragraph 15, may not be utilized to benefit or improve other buildings or property owned by THE GARDENS and not a part of the Facilities.

(b) THE GARDENS shall have no authority to sell, lease, encumber, hypothecate, or otherwise create or assign a property or financial interest in any real property, fixtures, or other permanent improvements located on or in the Facilities.

(c) Any equipment, supplies, plants, vehicles, art, books, artifacts, or other personal property purchased by THE GARDENS with non-City funds or which are conveyed specifically to THE GARDENS as a non-profit corporation shall be held in legal ownership by THE GARDENS. Acting as the agent for the City but not subject to the City's purchasing and selling requirements, THE GARDENS may, from time to time (as THE GARDENS determines to be prudent and warranted), modify, expand, or alter its botanical and horticultural collections through sale, purchase, trade, or loan and may replace, by the same means, items of equipment, supplies, animals, plants, vehicles. This subparagraph shall not apply to City-owned personal property or property otherwise purchased with City funds or gifted, granted or donated to the City.

(d) Any City-owned equipment or vehicles currently assigned exclusively for use at the Facilities may be replaced by THE GARDENS as allowed herein, and must follow City rules for such transactions. THE GARDENS may cooperate with any City department willing and authorized to participate in the exchange, sharing, or loan of equipment or vehicles or in the joint purchase of equipment or vehicles, subject to all applicable Charter or ordinance requirements.

19. NONDISCRIMINATION. THE GARDENS agrees to comply with all applicable laws concerning non-discrimination against persons because of their race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, gender identity or gender expression, age,

military status, source of income, sexual orientation, marital status, protective hairstyle, or disability in connection with membership on THE GARDENS' Board, access to any of the Facilities, and participation in any public program at the Facilities. In connection with the performance of work under this Agreement, THE GARDENS agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, gender identity or gender expression, age, military status, sexual orientation, marital status, source of income, protective hairstyle, or disability; and further agrees to insert the foregoing provision in all contracts, subcontracts, or agreements it may enter.

20. FORCE MAJEURE. If any Party to this Agreement is rendered unable, wholly or in part, by an event of force majeure or any other cause not reasonably within its control, to perform or comply with any obligation or condition of this Agreement, such Party, upon giving notice and reasonably full particulars to the other Party, be relieved of such obligation or condition during the continuance of such inability.

21. INDEMNIFICATION AND IMMUNITY.

(a) THE GARDENS hereby agrees to defend, indemnify, reimburse and hold harmless the City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify the City for any acts or omissions of THE GARDENS or its subcontractors either passive or active, irrespective of fault, including the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

(b) THE GARDENS' duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. THE GARDENS duty to defend and indemnify the City shall arise even if the City is the only party sued by claimant and/or claimant alleges that the City's negligence or willful misconduct was the sole cause of claimant's damages.

(c) THE GARDENS will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to the City and shall not be considered City's exclusive remedy.

(d) Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of THE GARDENS under the terms of this indemnification obligation. THE GARDENS shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

(e) This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

Under no circumstance shall this paragraph or any other provision of this Agreement be construed as constituting a waiver of immunity on the part of the City or for any of its facilities under the Colorado Governmental Immunity Act (C.R.S. §§ 24-10-101 et seq.).

22. CLAIMS. In the event that any claim, demand, suit, or other action is made or brought in writing by any person, firm, corporation, or other entity against THE GARDENS related in any way to this Agreement or the operation of the Facilities, THE GARDENS shall give written notice thereof to the City, within five (5) working days after receiving notification of such claim, demand, suit, or other action. Such notice shall state the date and hour of notification and shall include a copy of any such claim, demand, suit, or other action received by THE GARDENS.

23. TAXES, DEBTS, LIENS AND LICENSES.

(a) THE GARDENS shall collect and remit all sales taxes and other taxes as required by law (local, state, or federal), and shall promptly pay all taxes and excise and license fees of whatever nature applicable to this Agreement, and maintain current all licenses (local, state, or federal) required for the performance of this Agreement and shall not permit any of said taxes and excise and license fees to become delinquent.

(b) THE GARDENS shall not permit any mechanic's or materialman's lien or any other lien to be filed or imposed and filed or imposed remain for more than ninety (90) days regarding the property of the City, or any part or parcel thereof, as a result of any work or labor performed or materials furnished by any person, partnership, association, company, corporation, or other entity to or for the Facilities, either pursuant to C.R.S. § 38-26-107, as amended, or by other authority.

(c) THE GARDENS shall promptly pay, when due, all bills, debts, and obligations incurred in connection with its management or administration of the Facilities and shall not permit the same to become delinquent.

(d) THE GARDENS has no right to impose and shall suffer no lien, mortgage, judgment, execution, or adjudication of bankruptcy that would, in any way, impair the rights of the City under this Agreement or its rights to the Facilities.

(e) THE GARDENS may, diligently and in good faith, resist or contest the application or imposition of any such tax, fee, lien, debt, or obligation, in which case the same shall not be considered due, owing or imposed for the purposes of this Agreement until final adjudication of validity. THE GARDENS may likewise, diligently and in good faith, appeal any judgment, execution, or adjudication of bankruptcy, in which case the same shall not be regarded as impairing the City's rights until final adjudication.

24. NON-WAIVER. A failure by either Party to take any action with respect to any default or violation by the other Party of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of the first Party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

25. ASSIGNMENT AND ENCUMBRANCE OF INTERESTS. THE GARDENS shall not assign, encumber, or otherwise transfer any rights or interests granted by this Agreement,

in whole or in part, without the written consent of the City. If any Assignment or Encumbrance is approved, the conditions of which shall include but not be limited to the following: (1) the assignee or transferee shall agree to assume, and can reasonably demonstrate the ability to perform, the obligations of THE GARDENS under this Agreement; and (2) the assignee or transferee shall agree to be bound by the terms, covenants, and conditions contained in this Agreement to be performed or satisfied by THE GARDENS with the like force and effect as though such assignee or transferee had been originally named hereunder. No assignment, encumbrance, or transfer of any kind shall be permitted that would extend or be effective beyond the term of this Agreement. Any assignment, encumbrance, or transfer must be approved by the Executive Director, and executed in the same manner as this Agreement. If THE GARDENS did not assign, encumber, or otherwise transfer any rights or interests in any given year, THE GARDENS shall indicate such in the Annual Report.

26. POLITICAL ACTIVITY. No City or Scientific and Cultural Facilities District funds, City real or personal property, or Facilities shall be used by THE GARDENS in connection with any activities of a political nature, including, but not limited to, any activity to further the appointment, election, defeat, or removal of any applicant, incumbent, or candidate for public office or any activity undertaken to influence the passage, defeat, or final content of any legislation or ballot proposal. A strict accounting of all other funds used by THE GARDENS for political activity shall be maintained and available for public review.

27. SAFETY. THE GARDENS shall develop and implement safety policies and programs to help assure the safety of THE GARDENS employees and the general public and shall, upon request, provide a copy of the safety policies and programs, and any amendments thereto, to the Executive Director. As the Executive Director may reasonably request, THE GARDENS shall submit to the Executive Director incident reports, including safety measures and instances of theft, property damage, and personal injury.

28. ANNUAL REPORT. THE GARDENS shall submit to the Executive Director a comprehensive written report of its activities during the preceding year, and planned activities for the upcoming year, as set forth below (the "Annual Report"). The Annual Report shall be submitted by January 31st of each year or by such other date as THE GARDENS and the Executive Director shall agree. The Annual Report shall include:

- (a) Amendments or updates to personnel rules and regulations, and code of ethics (Paragraph 7);
- (b) Current general public access hours for the Facilities (including Parking Facility) (Paragraph 12);
- (c) Free days schedule and eligibility requirements for the upcoming year (Paragraph 12);
- (d) Final budget for the current year (Paragraph 15);
- (e) Planned or proposed grants or grant applications for the current year and upcoming year that benefits and/or obligates the City or the Facilities (Paragraph 15(h));
- (f) Proposed admission fee changes for the upcoming year (Paragraph 15);

- (g) Proposed facility use fee changes for the upcoming year (Paragraph 15);
- (h) Proposed changes to Parking Facility rates for the upcoming year (Exhibit C);
- (i) Concession agreements entered into, amended, modified or terminated in the preceding year and any anticipated concessionaire agreements for the upcoming year (Paragraph 13);
- (j) Amendments or modifications to concessionaire competitive selection procedures (Paragraph 13);
- (k) List of new plans for events, operation or use of Facilities, including upcoming major events with Citywide or regional public impact (Paragraph 9(c));
- (l) Assignments or encumbrances of rights or interests in the preceding year (Paragraph 25);
- (m) List of sponsorships sold or sponsorships intended for sale;
- (n) Modifications to the Cooperative Statement (Paragraph 4);
- (o) Planned capital improvements and capital maintenance projects for the year.
- (p) List of completed projects from the preceding year, and copies of as-builts where applicable (Paragraph 11);
- (q) List of Parking Facility alterations, major repairs or improvements to structural, mechanical, and/or electrical installations from the preceding year (Exhibit C);
- (r) List of material changes to access, traffic control systems, curb cuts, vehicle capacity and other changes that alter the use and operation of the Parking Facility from the preceding year (Exhibit C);
- (s) Amendments or modifications to articles of incorporation and/or bylaws in the preceding year (Paragraph 16);
- (t) Documentation of expenditures related to operation of the Parking Facility or associated premises as provided to City Auditor for the preceding year (Exhibit C);
- (u) Summary, dates, and attendees of meetings between the Neighborhood Advisory Committee and THE GARDENS in the preceding year (Paragraph 17);
- (v) Proposed decrease in Parking Facility operating expenses for the upcoming year (Exhibit C);
- (w) List of assets transferred to the City in the preceding year (Paragraph 18);

- (x) List of assets acquired then transferred to the City in the preceding year (Paragraph 18);
- (y) List of acquired, disposed of or modified assets in the preceding year (Paragraph 18); and
- (z) Summary of revenue received from all sources in the preceding year, including but not limited to those listed in Paragraph 15 (a) through (i).
- (aa) Such other information that THE GARDENS believes will assist the City in its oversight and administration of this Agreement.

As previously stated in each respective paragraph, if items (a) through (z) were not applicable for any given year, THE GARDENS shall indicate such in the Annual Report.

29. EXAMINATION OF RECORDS AND AUDIT. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to THE GARDENS' performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement upon at least fifteen (15) business days prior written notice to THE GARDENS at the office of THE GARDENS. THE GARDENS shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of one (1) year after the final payment or delivery of final obligations under this Agreement or expiration of the applicable statute of limitations, whichever is later. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this section shall require THE GARDENS to make disclosures in violation of state or federal privacy laws. THE GARDENS shall at all times comply with Section 20-276, D.R.M.C.

30. INSURANCE AND RELATED SERVICES. Subject to availability of City appropriations, the City shall provide, at no cost to THE GARDENS:

(a) **Property Insurance.** The City shall secure all risk property insurance on a replacement cost basis for the Facilities in an amount and according to terms acceptable to the City Risk Management Office. THE GARDENS agrees to assist with all requests for underwriting information, insurance inspections, and claims investigations.

(b) **Fine Arts Insurance.** The City shall secure fine arts insurance for all fine arts owned by the City and for any fine art on loan to be displayed at the Facility. THE GARDENS agrees to assist with all requests for underwriting information, insurance inspections, and claims investigations.

(c) The City may provide to THE GARDENS such other services, such as legal, accounting, risk management, or maintenance services to supplement those same services provided by THE GARDENS, to the extent that may be agreed upon by the Parties from time to time.

31. THE GARDENS INSURANCE

(a) General Conditions. THE GARDENS agrees to secure, at or before the time of execution of this Agreement, the insurance described in this Paragraph 31 covering all operations, goods or services provided pursuant to this Agreement. THE GARDENS may utilize the City's annual appropriation as provided in Paragraph 15(a) of this Agreement or any other funding source under Paragraph 15 of this Agreement, to the extent such expenditure is authorized under said Paragraph 15, to pay the premium and other costs of the required insurance coverage. THE GARDENS shall keep the required insurance coverage in force at all times during the Term of this Agreement, or any extension thereof, and other period prescribed by law. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the above-described policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to 1) Denver Risk Management Office, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202, 2) the Denver Executive Director of Parks and Recreation, 201 West Colfax Avenue, Dept. 601, Denver, Colorado 80202, and 3) with respect to the Parking Facility on the Premises, the UMB Bank, n.a., as COP Trustee, 1670 Broadway, Denver, Colorado 80202, with all notices to be sent by certified mail, return receipt requested. Such written notice shall be sent thirty (30) days prior to such cancellation unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. In addition, with respect to the Parking Facility, THE GARDENS shall send separate notice of any cancellation or reduction in coverage, below the amounts specified in this Paragraph 31(a), to the COP Trustee and the City by certified mail, return receipt requested. THE GARDENS shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of THE GARDENS. THE GARDENS shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement or as otherwise required by law.

(b) THE GARDENS agrees to maintain such insurance policies on the Facilities or its operations as are required by the City Department of Risk Management, as such requirements are changed from time to time.

(c) Proof of Insurance. THE GARDENS shall provide a copy of this Agreement to its insurance agent or broker. THE GARDENS shall provide certificate(s) of insurance of all required insurance to the COP Trustee, Denver Risk Management, and the Manager. Denver's Risk Management Office may require additional proof of insurance, including but not limited to polices and endorsements.

(d) Additional Insureds. For commercial general liability and business auto liability, THE GARDENS's insurer shall name the City as an additional insured.

(e) Waiver of Subrogation. For all coverages, THE GARDENS's insurer shall waive subrogation rights against the City.

(f) Subcontractors and Subconsultants. All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required

by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of THE GARDENS. THE GARDENS shall include as insureds under its policies or shall ensure that all subcontractors and subconsultants maintain the required coverages. THE GARDENS agrees to provide proof of insurance for all such subcontractors, subconsultants, independent contractors, suppliers or other entities upon request by the City.

(g) Workers' Compensation/Employer's Liability Insurance. THE GARDENS shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

(h) Commercial General Liability. THE GARDENS shall maintain limits of \$1,000,000 for each occurrence claim, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations for each occurrence, and \$2,000,000 policy aggregate. Aggregate limits must be "per project" or "per location," if applicable under this Agreement. For general liability, the policy must not contain an exclusion for injury or damage from mold, fungus, or other biological pathogens.

(i) Automobile Liability. THE GARDENS shall maintain limits of \$1,000,000 combined single limit for all vehicles operating on City property and elsewhere off City property.

(j) Garage Keeper's Legal Liability Insurance. Garage keeper's legal liability insurance (if applicable) insuring any and all automobiles that are parked at the Facilities by THE GARDENS' attendants or for which a bailment otherwise is created, with limits of liability not less than \$1,000,000 per occurrence.

32. AMENDMENTS. This Agreement may be modified, changed, or amended only by the mutual written agreement of the Parties or their successors or assigns, approved and executed in the same manner as this Agreement.

33. TERMINATION. Other than as provided in Paragraph 5 above, this Agreement may be terminated only as follows:

(a) In the event that THE GARDENS shall default, on its part, in the performance or fulfillment of any material term, covenant, or condition herein contained and shall fail to cure such default within ninety (90) days following delivery of written notice, as provided in Paragraph 37 below, from the Executive Director specifying the default(s) and the date on which the City may exercise its right to terminate the Agreement if such default(s) is not cured. Upon written request of THE GARDENS submitted not less than thirty (30) days prior to termination date, the City shall provide THE GARDENS with an opportunity to be heard on the matter before the Mayor prior to the termination date or any extension date agreed to in accordance with subparagraph (c) below. If, after notice and an opportunity to be heard, the Mayor decides to terminate the Agreement, and if the default(s) is not cured by the termination date or any extension date, then the Executive Director shall so notify THE GARDENS that the provisions of subparagraph (d) below shall be effective on the later of these two dates. As used in this subparagraph, the term "Mayor" shall also mean the Deputy Mayor exercising such authority as provided in Article I of the City Charter.

(b) In the event that the City shall default, on its part, in the performance or fulfillment of any material term, covenant, or condition herein contained and shall fail to cure such default within ninety (90) days following delivery of written notice, as provided in Paragraph 37 below, from THE GARDENS specifying the default(s) and the date on which THE GARDENS may exercise its right to terminate the Agreement if such default(s) is not cured. If the default(s) is not cured or some other resolution is not reached at least thirty (30) days prior to the termination date or any extension date agreed to in accordance with subparagraph (c) below, THE GARDENS shall so notify the Executive Director that the provisions of subparagraph (d) below shall be effective on the later of these two dates.

(c) The time to cure any default may be extended to a date certain upon mutual agreement of the Parties. If the default is not cured in accordance with said agreement, this Agreement may be terminated by written notice as provided in Paragraph 37 below.

(d) Upon termination of this Agreement, including termination or expiration of this Agreement as provided in Paragraph 5 above, the Facilities shall remain the property of the City, and all personal property acquired by public funds, in whole or part, and used for or integral to the maintenance, management, or operation of the Facilities, including without limitation equipment, supplies, animals, plants, collections, and vehicles acquired by public funds, in whole or part, shall immediately become the property of the City. THE GARDENS shall take all reasonable measures to turn over the Facilities and all other City-owned property to the City in a timely manner and in reasonably good operating condition. Any public funds that have not been used by THE GARDENS under this Agreement and not needed to cover THE GARDENS' obligations incurred in performing its duties under this Agreement shall be promptly returned to the City. All remaining funds (including, without limitation, funds held by THE GARDENS as endowment) and other real and personal property held by THE GARDENS (not otherwise conveyed to the City under this subparagraph) shall be used or distributed by THE GARDENS consistent with the duties and obligations of THE GARDENS by law or other agreement.

34. STATUS AND AUTHORITY OF THE GARDENS.

(a) THE GARDENS and the City acknowledge and agree that the status of THE GARDENS shall be that of an agent for the City and of a private, nonprofit corporation retained by the City on a contractual basis solely for the purposes set forth in this Agreement.

(b) The scope of authority THE GARDENS may exercise shall be as expressly delegated, assigned, or allowed under, or necessarily implied in, this Agreement. THE GARDENS shall have no authority to avoid, modify or waive any applicable City ordinances or regulatory requirements enacted or adopted under the City's police or taxing powers.

(c) The authority delegated under this Agreement shall not be construed to grant THE GARDENS the right or power to bind, or to impose any liability upon, the City through any contracts or agreements THE GARDENS may make, unless expressly provided herein or unless the prior, written approval of the Executive Director is obtained and the contract or agreement is in accordance with all applicable City ordinances and regulatory requirements. All contracts or agreements made by THE GARDENS shall be in its own name and not in the name of the City. Likewise, the City shall have no authority to bind, or to impose liability upon, THE

GARDENS through any contracts or agreements the City may make, unless the prior, written approval of THE GARDENS is obtained.

(d) THE GARDENS shall at all times during the term of this Agreement maintain its status as a tax-exempt nonprofit corporation in good standing under federal and state law and shall engage in no business or other activity that would jeopardize its tax-exempt status.

35. COMPLIANCE WITH LAW. THE GARDENS and the City acknowledge and agree that this Agreement shall be governed by and construed, to the extent applicable, in accordance with the laws of the State of Colorado and the Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, and that each Party shall perform its obligations hereunder in accordance with applicable laws and those rules and regulations promulgated by the Executive Director governing the utilization of City parks. The Executive Director agrees to provide THE GARDENS with reasonable notice of, and an opportunity to review and comment on, any changes in laws, rules, or regulations applicable to the Facilities proposed by the Executive Director before such changes are enacted or adopted. It is understood that the Executive Director will not, in any event, propose any changes in laws, rules, or regulations applicable to the Facilities as a means to depart from or to avoid compliance with the express terms of this Agreement.

36. ENVIRONMENTAL COMPLIANCE. THE GARDENS shall obtain all federal, state, and local environmental permits necessary for work and shall comply with all applicable federal, state, and local environmental permit requirements. THE GARDENS shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders (collectively, "Environmental Requirements"), including but not limited to Environmental Requirements regarding the storage, use, transportation, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. The term "Hazardous Materials" shall mean asbestos, asbestos-containing soils, and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, any Colorado statutes serving a similar purpose for environmental regulation, and any guidelines issued and rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute. Notwithstanding the preceding provisions of this paragraph 21, THE GARDENS is not responsible for curing any environmental hazard which existed on May 28, 1997.

37. NOTICES. All notices, demands or consents required or permitted under this Agreement shall be in writing and delivered as provided in this Paragraph 37 (unless the means of delivery is otherwise expressly specified in this Agreement). Notices shall be deemed delivered upon receipt, if delivered personally or by facsimile transmission (receipt verified by telephone), or upon the third day following posting by certified mail, return receipt requested, to the following addresses:

If to THE GARDENS:

Chief Executive Officer
Denver Botanic Gardens
909 York Street
Denver, CO 80206

If to the City or the Executive Director:

Department of Parks and Recreation
Attn: Executive Director
City and County of Denver
201 W. Colfax Ave., Dept 601
Denver, Colorado 80202

The address for any Party set forth above may be changed at any time by written notice in the manner provided herein to all other Parties.

38. ALCOHOL AND DRUGS POLICY; SMOKING POLICY.

(a) THE GARDENS, its officers, agents, and employees shall cooperate with the provisions of Executive Order No. 94 and Attachment A thereto, and any applicable law concerning the use, possession or sale of alcohol or drugs. Refusal to cooperate with implementation of the policy can result in the City barring THE GARDENS from City facilities or participating in City operations. THE GARDENS, as an employer, shall adhere to applicable law regarding alcohol and drug abuse. THE GARDENS shall, through its personnel rules and regulations, or otherwise, maintain a policy against the possession, use or sale of illegal drugs or the unauthorized use by employees of alcohol in the workplace in order to promote safe, healthful, and efficient operations. THE GARDENS agrees not to use any funds received from the City under this Agreement for the purchase, acquisition, or receipt of consumable alcohol.

(b) THE GARDENS shall comply as applicable with Executive Order No. 99. The Parks and Recreation Alcohol Policy, effective as of January 1, 2019, may apply as appropriate to THE GARDENS and the Facilities.

39. SUBCONTRACTING. Any work or service that is allowed to be subcontracted under this Agreement shall be subject by its terms to this Agreement. Compliance therewith is the responsibility of THE GARDENS. THE GARDENS shall, upon request, provide to the Executive Director a copy of any written contract or agreement for work or services covered by this Agreement.

40. NO THIRD-PARTY BENEFICIARIES. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and THE GARDENS, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other party or third person on such Agreement. It is the express intention of the City and THE GARDENS that any person other than the Parties hereto receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only. Notwithstanding the foregoing, the Trust and the COP Trustee shall be third party beneficiaries with respect to the Parking Facility and

Operations under **Exhibit C**, entitled “**Parking Facility Trust Lease, Operation, Maintenance and Reporting**”.

41. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one Agreement.

42. LEGAL AUTHORITY.

(a) THE GARDENS warrants that it possesses the legal authority, pursuant to any proper and official motion, resolution or action passed or taken, to enter into this Agreement.

(b) The person(s) signing and executing this Agreement on behalf of THE GARDENS does hereby warrant and guarantee that the signatory(ies) below has been fully authorized by THE GARDENS to execute this Agreement on behalf of THE GARDENS and to validly and legally bind THE GARDENS to the obligation and performance of all the terms, covenants, and conditions herein set forth. The person(s) signing and executing this Agreement assume no personal liability in their individual capacity under this Agreement.

(c) THE GARDENS may establish such other committees, advisory or otherwise, having such duties and authorities as it shall determine.

43. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS. The Parties consent to the use of electronic signatures by the other Party. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

Contract Control Number: PARKS-202367269-00
Contractor Name: Denver Botanic Gardens, Inc.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

PARKS-202367269-00
Denver Botanic Gardens, Inc.

By:  DocuSigned by:
C419CAFF51D64AD...

Name: Brian Vogt
(please print)

Title: CEO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A

KUTAKROCK

Kutak Rock LLP
1801 California Street, Suite 3000, Denver, CO 80202-2652
office 303.297.2400

May 4, 2023

City and County of Denver
c/o Denver City Attorney's Office
1437 Bannock, Room 353
Denver, Colorado 80202

Re: Private Business Tests Review and Analysis: Amended and Restated Cooperative Agreement between the City and County of Denver and Denver Botanic Gardens, Inc., relating to the Denver Botanic Gardens

Ladies and Gentlemen:

We have been advised that the City and County of Denver (the "City") intends to enter into an Amended and Restated Cooperative Agreement (the "Cooperative Agreement") with Denver Botanic Gardens, Inc. (the "Corporation"). The Cooperative Agreement provides for administration, maintenance, planning, management and operation by the Corporation of the City's botanic gardens, arboretum and parking facility located at Ninth Avenue and York Street within the City (the "Denver Botanic Gardens"). The Cooperative Agreement provides for all or a portion of the revenues from the operation of the Denver Botanic Gardens to be retained by the Corporation, in the manner and in the amount set forth in the Cooperative Agreement.

The City has represented to us that portions of the Denver Botanic Gardens have been financed or refinanced by proceeds of the following federally tax-exempt bonds (collectively and to the extent outstanding as of the date hereof, the "Bonds") and certificates of participation (to the extent outstanding as of the date hereof, the "Certificates"), in the approximate amounts shown:

- (a) \$6,564,062 from the new money portion of the \$120,925,000 General Obligation Better Denver and Refunding Bonds, Series 2013A (the "Series 2013A Bonds");
- (b) \$14,975,675 from the \$17,735,000 Certificates of Participation, Series 2008B (Denver Botanic Gardens Parking Facility Project), which were refunded by the \$15,506,673 Certificates of Participation, Series 2017A (Denver Botanic Gardens Parking Facility);
- (c) \$12,000,000 from the \$193,000,000 General Obligation Elevate Denver Bonds, Series 2018A (the "Series 2018A Bonds"); and

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City and County of Denver
c/o Denver City Attorney's Office
May 4, 2023
Page 2

- (d) \$6,000,000 from the \$81,910,000 General Obligation Elevate Denver Bonds, Series 2019A (the "Series 2019A Bonds").

The City has further represented to us that (1) neither the City nor any agency of the City (nor any other related person to the City) presently receives or expects for the foreseeable future to receive revenues from the Denver Botanic Gardens except to the extent provided under the lease financing documents relating to the Certificates, and (2) no portion of the repayment of the Bonds is secured, directly or indirectly, from revenues from, or other property interests in, the Denver Botanic Gardens. The lease financing documents relating to the Certificates indicate that the Certificates were executed and delivered as "qualified 501(c)(3) bonds" within the meaning of Section 141(e)(1)(G) of the Internal Revenue Code of 1986 (the "Code"). We assume for the purpose of this letter that the Corporation's use of the Denver Botanic Gardens does not constitute unrelated trade or business use within the meaning of Section 513 of the Code. We have not conducted any independent diligence and have not taken any steps to verify the accuracy of the representations and assumptions set forth in this paragraph.

The City has requested that we review, and we have reviewed, the Cooperative Agreement to determine whether private business use is generated by the Cooperative Agreement and, if it is generated, whether such use will exceed the private business use limitations applicable to the Bonds and the Certificates imposed by Section 141(b)(1) of the Code and, if the limitations are exceeded, whether the Bonds and the Certificates will meet the private security or payment test of Section 141(b)(2) of the Code.

Each issue of Bonds will meet the private business use test if more than ten percent of the proceeds of the issue (or five percent, with respect to unrelated or disproportionate uses) are to be used for private business use, as such term is used in Section 141(b)(1) of the Code. In general, a nongovernmental person is treated as a private business user of proceeds of an issue of Bonds and of the property financed by such Bonds as a result of ownership or actual or beneficial use of property pursuant to a lease, or a management or incentive payment contract, as set forth in Section 1.141-3(b) of the Treasury Regulations. Based on our review of the Cooperative Agreement, we are of the view that the use of the Denver Botanic Gardens by the Corporation constitutes use under a management contract. In general, a facts and circumstances test determines whether use under a management contract results in private business use. Revenue Procedure 2017-13 sets forth safe harbors pursuant to which a management contract will not result in private business use. We advise that use of the Denver Botanic Gardens by the Corporation as contemplated by the Cooperative Agreement may constitute private business use of the Bonds.

With respect to the issues of Series 2013A Bonds and Series 2018A Bonds, such private business use may not exceed the applicable ten percent private business use limitation. However, with respect to the Series 2019A Bonds, such private business use appears to exceed the applicable ten percent private business use limitation. For sake of administrability, we recommend the City

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City and County of Denver
c/o Denver City Attorney's Office
May 4, 2023
Page 2

conservatively treat use contemplated by the Cooperative Agreement as exceeding the private business use limitations of each issue of Bonds and, therefore, the City act to ensure no issue of the Bonds will meet the private security or payment test of Section 141(b)(2) of the Code.

Each issue of Bonds will meet the private security or payment test if the payment of debt service on more than ten percent of the proceeds of the issue (or five percent, with respect to unrelated or disproportionate uses) is directly or indirectly (i) secured by (A) any interest in property used or to be used for a private business use or (B) payments in respect of such property, or (ii) to be derived from payments in respect of property or borrowed money used or to be used for private business use. Based on our review and the representations made by the City as noted above in this letter relating to revenues of the Denver Botanic Gardens and security for the Bonds, we are of the view that no issue of the Bonds will meet the private security or payment test. As a consequence, we are of the view that the execution and delivery of the Cooperative Agreement will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes. We advise the City to annually track (i) any future receipt of revenues from the Denver Botanic Gardens (whether received by the City, an agency of the City or any related person to the City) and (ii) changes in security for the Bonds, to ensure the private security or payment test is not met.

The issue of Certificates will meet the private business use test if more than five percent of the proceeds of the issue are to be used for private business use. With respect to the Certificates, however, the Corporation is not treated as a nongovernmental person so long as the Corporation's use of the property financed by the Certificates does not constitute unrelated trade or business use under Section 513 of the Code. Based on the representations of the City and the assumptions set forth above in this letter, use by the Corporation of the Denver Botanic Gardens does not constitute private business use of the Certificates, notwithstanding the Cooperative Agreement. As a consequence, the execution and delivery of the Cooperative Agreement will not adversely affect the excludability of interest on the Certificates from gross income for federal income tax purposes.

The scope of our engagement has not extended beyond the review of the Cooperative Agreement and the conclusions contained herein. The conclusions expressed herein are based on existing laws on the date hereof, and we express no opinion as of any subsequent date or with respect to any pending or future proposed or final Treasury Regulations and legislation. This letter has been prepared solely for your use and may not be relied on by any other person without our prior written consent.

Very truly yours,

Kutak Rock LLP

Kutak Rock LLP

Denver Botanic Gardens

Legal Description

Two Parcels of land located in the Southwest quarter of the Northwest quarter and the Northwest quarter of the Southwest quarter of Section 1; and the Southeast quarter of the Northeast quarter and the Northeast quarter of the Southeast quarter of Section 2; all in Township 4 South, Range 68 West of the 6th Principal Meridian, City and County of Denver, State of Colorado more particularly described as follows:

West Parcel

Commencing at the Twenty (20) Foot Range Point at the intersection of Race Street and 11th Avenue, according to Brewer's Park Place, according to the plat recorded in Engineering Book 10, Engineering Page 040, January 28, 1896 of the records of the City and County of Denver Clerk and Recorder (originally recorded at Book 13, Page 40, Clerk Record Number 1311 of Arapahoe County, Colorado), and considering the Twenty (20) Foot Range Line in 11th Avenue to bear N 89°48'49" E with all bearings contained herein being related thereto; Thence S 30°37'59" W, a distance of 287.99 feet to the Southwest corner of Block 70 of said Brewer's Park Place, said point being the Point of Beginning; Thence N 89°26'49" E, along the Southerly lines of said Brewer's Park Place, and E.F. Hallack's Second Addition to Denver, a distance of 899.87 feet to the Southwest corner of Block 67 of said E.F. Hallack's Second Addition to Denver; Thence N 0°11'11" W, along the West line of said Block 67, a distance of 181.56 feet to the Northwest corner of said Block; Thence N 89°48'49" E, along the North line of said Block, a distance of 266.00 feet to the Northeast corner of said Block 67, from which a 20 Foot Range Line monument being a 2 ½" aluminum cap stamped "PLS 34980 20' RL" bears N 18°14'03" E, a distance of 63.24 feet; Thence S 0°11'11" E, along the East line of said Block, a distance of 179.86 feet to the Southeast corner of said Block; Thence S 0°10'19" E, along the Westerly right-of-way line of York Street as described in Book 5225 at Page 188 of said City and County records, a distance of 660.03 feet to a point on the North line of Morgan's Capitol Hill Sub-Division said point also being the Northeasterly corner of that parcel of land described in the deed recorded in Book 3509 at Page 656 of the records of the City and County of Denver Clerk and Recorder ; Thence S 89°27'18" W, along said North line of Morgan's Capitol Hill Sub-Division, a distance of 1160.13 feet to the Northwest corner of said Morgan's Capitol Hill Sub-Division; Thence N 0°40'13" W, a distance of 659.85 feet to the Point of Beginning.

East Parcel

Commencing at the Range Point at the intersection of York Street and 11th Avenue, according to the plat of E.F. Hallack's Second Addition to Denver, and considering the Twenty (20) Foot Range Line in 11th Avenue to bear N 89°48'49" E with all bearings contained herein being related thereto; Thence S 45°11'40" E, a distance of 84.86 feet to the Northwest corner of

Block 66 of said E.F. Hallack's Second Addition to Denver, said point being the Point of Beginning; Thence N 89°48'49" E, along the North line of said Block 66, a distance of 266.00 feet to the Northeast corner of said Block, from which a 20 Foot Range Line monument being a 2 ½" aluminum cap stamped "PLS 34980 20' RL" bears N 79°45'29" W, a distance of 331.48 feet; Thence S 0°11'11" E, along the East line of said Block, a distance of 178.31 feet to the Southeast corner of said Block 66; Thence S 89°38'56" W, along the South line of said E.F. Hallack's Second Addition to Denver, a distance of 4.61 feet to a point on a curve on the Westerly right-of-way line of Josephine Street; Thence along said Westerly right-of-way line the following two (2) courses:

- 1) Thence along the arc of a non-tangent curve to right having a central angle of 26°16'16", a radius of 379.30 feet, an arc length of 173.92 feet, and a chord that bears S 21°41'39" W, a distance of 172.40 feet;
- 2) Thence S 34°49'47" W, a distance of 36.04 feet;

Thence S 10°10'13" E, a distance of 12.73 feet; Thence S 34°49'47" W, a distance of 19.13 feet to a point of curvature; Thence along the arc of a curve to left having a central angle of 35°33'00", a radius of 430.30 feet, an arc length of 266.99 feet, and a chord that bears S 17°03'17" W, a distance of 262.72 feet; Thence S 0°43'13" E, a distance of 117.44 feet; Thence S 44°16'47" W, a distance of 12.73 feet to the East line of the Northeast quarter of the Southeast quarter of said Section 2; Thence S 0°43'13" E, along said East line, a distance of 65.42 feet to the North line of Morgan's Capitol Hill Sub-Division, according to the plat recorded in Engineering Book 05 at Page 017, June 10, 1887 of the records of the City and County of Denver Clerk and Recorder (originally recorded at Book 4, Page 36, Clerk Record Number 411 of Arapahoe County, Colorado); Thence S 89°27'18" W, along said North line, a distance of 82.78 feet to the Easterly right-of-way line of York Street as described in Book 5225 at Page 188 of said County records; Thence N 0°10'19" W, along said Easterly right-of-way line, a distance of 51.52 feet; Thence N 45°10'19" W, a distance of 28.28 feet; Thence N 0°10'19" W, a distance of 381.02 feet; Thence N 44°49'41" E, a distance of 28.28 feet to a point on said Easterly right-of-way line; Thence N 0°10'19" W, along said Easterly right-of-way line, a distance of 187.49 feet to the Southwesterly corner of said Block 66; Thence N 0°11'11" W, along the West line of said Block 66, a distance of 179.35 feet to the Point of Beginning.

Botanic Gardens

Point of Commencement West Parcel

Point of Commencement East Parcel

Point of Beginning East Parcel

20' Range Line

11th Avenue

N89°48'49"E 1038.29'

N89°48'49"E 266.00'

S30°37'59"W 287.99'

Race Street

Block 69

Vine Street

Block 68

Gaylord Street

N0°11'11"W 181.56'

Block 67

S0°11'11"E 179.86'

N0°11'11"W 179.35'

Block 66

S0°11'11"E 178.31'

S89°38'56"W 4.61'

Josephine Street

$\Delta = 26^{\circ}16'16"$
 $R = 379.30'$
 $L = 173.92'$
 $Chb = S21^{\circ}41'39"W$
 $Chd = 172.40'$

Point of Beginning West Parcel

N89°26'49"E 899.87'

Chesman Park

N0°40'13"W 659.85'

City of Denver Botanic Gardens

City of Denver

York Street

N0°10'19"W 187.49'

S0°10'19"E 660.03'

N0°10'19"W 381.02'

S0°43'13"E 117.44'

S34°49'47"W 36.04'

S10°10'13"E 12.73'

S34°49'47"W 19.13'

$\Delta = 35^{\circ}33'00"$
 $R = 430.30'$
 $L = 266.99'$
 $Chb = S17^{\circ}03'17"W$
 $Chd = 262.72'$

Block 1

Race Street

Block 2

Vine Street

Block 3

Gaylord Street

Block 4

N45°10'19"W 28.28'

N0°10'19"W 51.52'

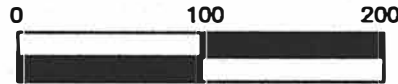
S44°16'47"W 12.73'

S0°43'13"E 65.42'

S89°27'18"W 82.78'



NORTH



SCALE = 1" = 100'

BY: Gregory S. Neitzke PLS
DATE: December 6, 2022

Exhibit C

PARKING FACILITY TRUST LEASE, OPERATION, MAINTENANCE AND REPORTING

I. Financing Agreements.

A. The City has entered, and may enter in the future, into agreements setting forth conditions, requirements, rights and obligations on the part of the City and THE GARDENS with respect to the Facilities and portions thereof including, without limitation, the Parking Facility at Denver Botanic Gardens. THE GARDENS acknowledges that it has received and fully read these agreements. The Parties hereby agree and covenant to take or avoid actions, as appropriate, to assure that such agreements are fully complied with and no default or breach is caused under these agreements. These agreements are incorporated herein by this reference and listed in this Exhibit A unless stated otherwise.

B. The Parties intend and agree that once the financing is paid in full and related agreements on the Parking Facility are satisfied then the requirements, rights and obligations set forth in this Exhibit A shall no longer apply. The Parking Facility shall, by operation of the agreements and the Trust Lease, become part of the Facilities and shall be treated for all purposes in the same manner as the Facilities, defined in Paragraph 2(c) of the Agreement, and any other real property of the City. The requirements under the Agreement shall otherwise apply to the Parking Facility as applicable.

II. Trust Lease. In order to effectuate the financing, construction and operation of the Parking Facility, the City, on its own behalf, has entered into agreements setting forth conditions, requirements, rights and obligation on the part of the City with respect to the Parking Facility and the Facilities. THE GARDENS acknowledges that it has received and fully read these agreements and hereby agrees and covenants to take or avoid actions, as appropriate, to assure that the agreements are fully complied with by THE GARDENS and no default or breach is caused by THE GARDENS under these agreements. The City's agreements are incorporated by reference herein and are included as exhibits to the Cooperative Agreement, and are as follows:

A. The Lease Purchase Agreement No. 2017A dated as of February 16, 2017, between Denver Botanic Gardens Parking Facility Leasing Trust 2017A and the City and County of Denver (which amends and restates the Lease Purchase Agreement dated November 12, 2008)(the "**2017A Lease**"), establishing the Denver Botanic Gardens Parking Facility Leasing Trust (referred to in this Agreement as "Trust" or "2017A Trust");

B. The Site Lease No. 2017A dated as of February 16, 2017, between the City and County of Denver and Denver Botanic Gardens Parking Facility Leasing Trust 2017A (which amends and restates the 2008B Site Lease)(the "**2017A Site Lease**");

C. The License and Access Agreement No. 2017A dates as of February 16, 2017 (which amends and restates the 2008B License and Access Agreement)(the "**2017A License Agreement**"); and

D. The Escrow Agreement Among the City, THE GARDENS and UMB Bank (“**Escrow Agreement**”). The City assigns to THE GARDENS, and THE GARDENS accepts, the rights and obligations of the City under the 2017A License Agreement, as may be further amended, for the purposes of installing and/or operating a garden on the Parking Facility in accordance with the License and Access Agreement. THE GARDENS agrees to comply with all obligations and responsibilities set forth in the Escrow Agreement.

III. Operation and Maintenance. THE GARDENS hereby covenants and agrees that it shall at all times, so long as bond or other financing is outstanding:

A. Operate and direct the operation of the Parking Facility in a safe, clean and orderly manner, and render the usual and customary services incidental thereto, in a professional, businesslike and efficient manner, but with discretion as to the specifics thereof as THE GARDENS deems advisable, subject only to the limitations and requirements contained in this Agreement, and provide supervision and inspection adequate to properly manage the Parking Facility.

B. Comply with the City’s prevailing wages requirements for THE GARDENS’s contractors and subcontractors who may be subject to the payment of prevailing wages, depending upon the nature of their work. By executing this Agreement, THE GARDENS covenants and affirms that THE GARDENS is familiar with the prevailing wages provisions and is prepared to pay or cause to be paid prevailing wages, if any, required by the scope of work of THE GARDENS’s contractors or subcontractors. THE GARDENS shall cooperate with the City’s Auditor in assuring compliance and enforcement herein.

C. Collect parking fees and other charges from users of the Parking Facility, the rates of which shall be determined by THE GARDENS from time to time and subject to City Council approval. THE GARDENS expressly acknowledges that any proposed increase or decrease in Parking Facility rates shall be submitted to the Executive Director and the Manager of Finance for prior review and approval or disapproval, and such approval or disapproval shall be provided by no later than thirty (30) days after submission, unless the Executive Director requests an extension, or City Council approval is required. If no change in rates was proposed for the preceding year THE GARDENS shall indicate such in the Annual Report. THE GARDENS shall be responsible for collection of fees, if any, from parkers and the disposition of said fees.

D. Provide snow removal and landscape maintenance for the Parking Facility, according to reasonable standards acceptable to the City, and to make minor repairs or improvements to the Parking Facility, as THE GARDENS deems appropriate. In accordance with Paragraph III.K., below, THE GARDENS shall not make, without the City’s prior written approval, alterations or major repairs or improvements to any structural, mechanical, electrical or other installations in or at the Parking Facility. THE GARDENS shall provide prompt notice of any proposed alterations or major repairs or improvements to any structural, mechanical, electrical or other installations, and the Executive Director’s shall approve or disapprove, in writing, the proposed alterations or major repairs or improvements within thirty (30) days of submittal. If no such projects were proposed or performed in the preceding year, THE GARDENS shall indicate

such in the Annual Report. THE GARDENS shall promptly notify the City of any matter related to the Parking Facility that in THE GARDENS's reasonable judgment requires the City's attention.

E. Advise and consult with the City with respect to matters of potential changes to access, traffic control systems, curb cuts, vehicle capacity, signage and/or any other matter that may substantially alter the use and operation of the Parking Facility, the implementation of any of which shall require the Executive Director's prior written approval or other approval required under City ordinances or regulations. THE GARDENS shall provide prompt notice of any such alteration of use described in this subparagraph E., and the Executive Director shall approve or disapprove, in writing, the proposed alteration within thirty (30) days of submission. If no such alteration was proposed or implemented in the preceding year, THE GARDENS shall indicate such in the Annual Report.

F. Provide all security services necessary for the safety of Parking Facility users and THE GARDENS's employees and to advise and consult with the City, when requested, as to security measures THE GARDENS will take to assure safety and security on the Parking Facility and the deterrence of criminal activity.

G. Pay for all expenses incurred by THE GARDENS in the performance of its duties, obligations and services pursuant to this Paragraph III. ("**Operating Expenses**"). "Operating Expenses" shall include, without limitation, all out of pocket costs, charges and administrative expenses for: salaries and wages and associated payroll burden (including, without limitation, payroll taxes and fringe benefits); license and permit fees; compliance with governmental laws and regulations; uniforms, supplies, tools and cleaning materials; maintenance and repair to be performed by THE GARDENS; telephone; computerized accounts receivable service; health insurance and workers' compensation insurance; general public liability insurance; general accounting and reporting services; training expenses; police services for traffic control or security; any damage claim or loss (plus attorney's fees and court costs to defend the City and/or THE GARDENS in actions brought to recover damages for such losses); and losses due to theft or robbery. THE GARDENS may use any funds available to it under this Agreement for paying Operating Expenses at the Parking Facility, to the extent that this Agreement allows such expenditures of such funds for such purposes at Denver Botanic Gardens. The City shall pay for standard utility charges and fees, excluding any cable or internet service, for the Parking Facility, to the extent provided in Paragraph 15(a) of the Cooperative Agreement.

H. Deposit in a federally insured bank account maintained by THE GARDENS all receipts (if any) collected by THE GARDENS under this Paragraph III ("**Gross Receipts**"). Gross Receipts shall be committed, first, toward the satisfaction of the debt on the Parking Facility, if so required by the City, and, second, to covering Operating Expenses, and, third, to covering any improvements to the Parking Facility which are not Operating Expenses, as authorized under this Agreement. "Gross Receipts" shall mean all sums collected by THE GARDENS for the parking and storage of motor vehicles, whether on an hourly, daily, weekly, or monthly basis, less all refunds, discounts and allowances made by THE GARDENS to its customers and less any sales, use, excise, occupancy, gross receipts, parking tax, or any other tax or charge collected by THE GARDENS on behalf of and payable to the tax collector (collectively, "**Sales Tax**"). With regard

to Sales Tax, as operator of the parking facility, THE GARDENS shall be responsible for payment directly to the tax collector of any Sales Tax based on Gross Receipts collected by THE GARDENS.

I. Provide prompt notice to the City prior to decreasing any Operating Expenses and other expenses that will result in a notable reduction of the general quality of parking service previously being rendered at the Parking Facility. If no such decreases are anticipated for the upcoming year, THE GARDENS shall indicate such in the Annual Report.

J. Prevent and disallow the use of the Parking Facility for any uses other than the public parking of vehicles and for access and uses in accordance with the License and Access Agreement, unless said uses are expressly approved by authorized officials of the City in writing following a determination by said officials that such uses are in conformance with all existing or subsequent legal and contractual obligations of the City with respect to the financing of the Parking Facility, including the Trust Lease and the Indenture.

K. Parking Facility Improvements. The City may assign authority to THE GARDENS for projects or improvements at Parking Facility subject to the satisfaction of the conditions:

1. Under the terms of the City's Lease Purchase Agreement No. 2017A, it is permissible to make substitutions, additions, modifications and improvements to the Parking Facility, as appropriate and any such substitutions, additions, modifications and improvements to the Parking Facility shall be subject to the leasehold and ownership interests of the Trust (or 2017A Trust, as applicable), and shall be included under the terms of the 2017A Site Lease and the 2017A Lease as hereafter defined; provided, however, that such substitutions, additions, modifications and improvements shall not in any way damage the Parking Facility or cause the Parking Facility to be used for purposes other than lawful governmental or proprietary functions of the City; and provided that the Parking Facility, as improved or altered, upon completion of such substitutions, additions, modifications and improvements, shall be of a value not less than the value of the Parking Facility immediately prior to such making of substitutions, additions, modifications and improvements.

2. It is further permissible from time to time in the City's sole discretion to install machinery, equipment and other tangible property in or on the Parking Facility. All such machinery, equipment and other tangible property shall remain the sole property of the City in which neither the Trust nor the Trustee of the 2017A Public Facilities Leasing Trust ("COP Trustee") shall have any interests; provided, however, that a leasehold ownership interest in any such machinery, equipment and other tangible property which becomes permanently affixed to the Leased Property shall be in the Trust, subject to the 2017A Site Lease, and shall be included under the terms of the 2017A Lease and the 2017A Site Lease, in the event the COP Trustee shall reasonably determine that the Parking Facility would be damaged or impaired by the removal of such machinery, equipment or other tangible property.

3. THE GARDENS shall not prevent or limit the right-of-entry at all reasonable hours to any City inspector, or the COP Trustee in accordance with Paragraph 12(a) of the Cooperative Agreement.

IV. Reporting.

A. Limitation. This Paragraph IV governs the funding and operation of the Parking Facility and shall not be construed to prohibit, limit, waive, or modify any other rights or obligations under this Agreement or any other agreements between the parties currently existing or entered in the future.

B. THE GARDENS or its agents or contractors shall provide to the City Auditor documentation of expenditures for the Parking Facility in form and detail sufficient to enable the Auditor to perform his responsibilities under the Charter and ordinances of the City. Such documentation shall include periodic invoices evidencing the work performed and the payroll reporting requirements contained in Section 20-76(d) of the Denver Revised Municipal Code.

C. THE GARDENS or its agents or contractors shall provide all documentation necessary to comply or assist in the City's compliance with the obligations of the Tax Compliance Certificate, **Attachment 1** to this exhibit; and shall follow the procedures set forth in **Attachment 2** to this exhibit, "Procedures For Ongoing Compliance with Sections 141 and 148 of the Internal Revenue Code." For so long as the 2017A Lease, as may be amended, remains outstanding, THE GARDENS shall file a true and accurate Schedule K for the preceding year, or its equivalent, as part of THE GARDENS' annual federal tax returns. THE GARDENS shall submit a copy of its Schedule K to the Executive Director by August 31st of each year.

D. THE GARDENS shall also provide by no later than August 31st of each year, the preceding year's financial report audited by a certified public accountant of THE GARDENS's choosing, and the preceding year's publicly issued institutional report.

Attachment 1

TAX CERTIFICATE

Dated February 16, 2017

of

CITY AND COUNTY OF DENVER, COLORADO

This Tax Certificate is executed and delivered by the City and County of Denver, Colorado and Denver Botanic Gardens, Inc. in connection with the execution and delivery of the Lease Purchase Agreement No. 2017A (Denver Botanic Gardens Parking Facility) (*Amends and Restates 2008B Lease*) dated the date hereof by and between the City, as lessee, and Denver Botanic Gardens Parking Facilities Leasing Trust 2017A (*Formerly Known as Denver Botanic Gardens Parking Facilities Leasing Trust 2008*), a Colorado trust, as lessor.

ARBITRAGE AND PRIVATE USE REQUIREMENTS

The information contained in this panel has no bearing on the initial status of the 2017A Lease and the Series 2017A Certificates, but is intended to highlight certain requirements of the Internal Revenue Code (including arbitrage rebate and yield restriction computation requirements and private use requirements) that must be satisfied to continue the tax-exempt status of the Interest Portions of the Base Rentals payable under the 2017A Lease and with respect to the Series 2017A Certificates. By executing this Tax Certificate, the City and Denver Botanic Gardens, Inc. (“DBG”) hereby acknowledge their respective obligations with respect to federal tax compliance. The City and DBG have reviewed and understand the covenants set forth herein. Failure to comply with certain of such requirements may affect the excludibility of the Interest Portions of the Base Rentals payable under the 2017A Lease and with respect to the Series 2017A Certificates from the gross income of the recipients thereof for federal income tax purposes **RETROACTIVE** to the Issue Date.

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and is included only for convenience of reference)

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EXHIBIT	F	CERTIFICATE OF THE TRUST
EXHIBIT	G	DBG 501(C)(3) DETERMINATION LETTER
EXHIBIT	H-1	PUBLIC APPROVAL CERTIFICATE
EXHIBIT	H-2	AFFIDAVIT OF PUBLICATION OF TEFRA HEARING

THIS TAX CERTIFICATE dated February 16, 2017, is executed and delivered by the City and County of Denver, Colorado, a municipal corporation and political subdivision duly organized and existing as a home rule city under the provisions of Article XX of the Constitution and the laws of the State of Colorado and the home rule Charter of the City, as lessee, and by Denver Botanic Gardens, Inc., a Colorado nonprofit corporation and Code Section 501(c)(3) organization.

PREFACE

All terms used herein as defined have the meanings ascribed to them in the hereinafter defined 2017A Indenture and 2017A Lease. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in Sections 1.01 and 1.02 hereof.

RECITALS

1. Pursuant to the City's Charter and home rule powers, the City (a) may, by ordinance, authorize the transfer of fee ownership and grant easements in real property owned by the City and (b) is authorized to enter into leasehold agreements, subject to annual appropriations, in order to provide necessary land, buildings, equipment and other property for governmental or proprietary purposes which agreements may include an option to purchase and acquire title to such leased or rented property.

2. In connection with the execution and delivery of the 2008B Site Lease and the 2008B Lease, the City Council determined that it was necessary, convenient and in furtherance of the governmental and proprietary purposes of the City and in the best interests of the City and its inhabitants that the City (a) enter into the 2008B Site Lease with the Trust and lease thereunder the Parking Facility Site, the City being the owner thereof, to the Trust, and additionally, to accept a license under the 2008B Site Lease, across, over, under and on the License Site (as defined in the 2017A Site Lease) and (b) enter into the 2008B Lease to provide for the acquisition, construction and installation of the Parking Facility on the Parking Facility Site and the leasing thereof, as the leased property under the 2008B Lease, from the Trust for use by the City, as lessee thereunder, for its governmental and proprietary purposes and for use by DBG in furtherance of its charitable purposes and to fulfill its duties and obligations under the Cooperative Agreement for the benefit of the City. The Project (as defined in the 2008B Lease) was completed and the related Certificate of Project Completion under the 2008B Lease delivered as required thereunder on January 11, 2011.

3. In connection with the original execution and delivery of the 2008B Lease, the Trustee for the Trust executed and delivered the 2008B Certificates pursuant to the 2008B Indenture. The proceeds of the 2008B Certificates were used to accomplish the 2008B Project, all as described in more detail in the 2008B Lease and in the 2008B Tax Certificate.

4. As described in more detail in the 2008B Indenture and the 2008B Tax Certificate, interest payable on the 2008B Certificates was expected to be excludible from gross income of the registered owners thereof for federal income tax purposes.

5. UMB Bank, n.a., as trustee (the "Trustee"), is entering into the 2017A Indenture (constituting an amendment and restatement of the 2008B Indenture) on the date hereof to

(a) confirm the establishment of the Trust and change the name of the Trust, (b) authorize the Trustee to act on behalf of the Trust, including the execution and delivery of the 2017A Lease (constituting an amendment and restatement of the 2008B Lease) on behalf of the Trust, and (c) provide for the execution and delivery of the Series 2017A Certificates. Pursuant to the 2017A Indenture, the Trust is to deposit the proceeds of the Series 2017A Certificates, together with the moneys on deposit in the 2008 Base Rentals Reserve Fund as of January 31, 2017, to the Costs of Execution and Delivery Fund and the Refunding Transaction Account in the Base Rentals Fund in order to accomplish the Refunding Transaction, all as further described in Section 3.01 of the 2017A Indenture and Article 4 of this Tax Certificate.

6. Pursuant to the 2017A Lease, and subject to the rights of the City to not appropriate the Base Rentals and Additional Rentals thereunder and, therefore, to not renew and to terminate the 2017A Lease and other limitations as therein provided, the City is to pay certain Base Rentals directly to the Trust in consideration of the City's right to possess and use the Leased Property.

7. The Trustee is entering into the 2017A Indenture for and on behalf of the Owners of the Series 2017A Certificates and, acting for the Trust, the Trustee will hold the rights of the Trust to the Revenues derived with respect to the Leased Property and will exercise the rights of the Trust under the 2017A Lease for the equal and proportionate benefit of the Owners of the Series 2017A Certificates as further described in the 2017A Indenture.

THE UNDERSIGNED HEREBY CERTIFIES, IN HIS CAPACITY WITH RESPECT TO, IN THE NAME AND ON BEHALF OF THE CITY AND COUNTY OF DENVER, COLORADO, AS FOLLOWS:

**ARTICLE 1
IN GENERAL**

Section 1.01 Definitions. All terms used herein as defined have the meanings ascribed to them in the 2017A Indenture and the 2017A Lease. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in this Section and in Section 1.02 hereof.

“2008B Base Rentals Fund” means the fund denominated the “Base Rentals Fund” established for the 2008B Certificates pursuant to Section 3.03 of the 2008B Indenture, as amended and restated by the 2017A Indenture.

“2008B Base Rentals Reserve Fund” means the fund denominated “2008B Base Rentals Reserve Fund” established for the 2008B Certificates pursuant to Section 3.07 of the 2008B Indenture.

“2008B Certificates” means the Certificates of Participation, Series 2008B (Denver Botanic Gardens Parking Facility Project) executed and delivered by the Trustee pursuant to the terms of the 2008B Indenture, the outstanding certificates maturing on and after December 1, 2017, to be advance refunded and all such outstanding certificates to be defeased in full as part of the Refunding Transaction.

“2008B Indenture” means the Declaration and Indenture of Trust dated as of November 12, 2008, entered into by the Trustee, as trustee, as the same is amended and restated by the 2017A Indenture, all in connection with the Refunding Transaction.

“2008B Lease” means the Lease Purchase Agreement No. 2008B (Denver Botanic Gardens Parking Facility) dated as of November 12, 2008, as the same is amended and restated by the 2017A Lease, between the Trust, as lessor, and the City, as lessee.

“2008B Project” means the design, acquisition, construction and equipping of the Parking Facility, including the preparation of the Parking Facility Site for such construction, the purchasing and planting of landscaping, the construction of retaining walls, street improvements, traffic signal and safety improvements and drainage facilities.

“2008B Project Facilities” means the facilities constructed, renovated or improved with the proceeds of the 2008B Certificates.

“2008B Tax Certificate” means the “Tax Certificate as to Arbitrage and the Provisions of Sections 141-150 of the Internal Revenue Code of 1986” of the City and DBG dated as of November 12, 2008, relating to the 2008B Lease and the 2008B Certificates.

“2008B Trustee” means UMB Bank, n.a. under the 2008B Indenture.

“2017A Certificates Account” means the 2017A Certificates Account within the Base Rentals Fund established for the Series 2017A Certificates pursuant to Section 3.03 of the 2017A Indenture.

“2017A Indenture” means the Declaration and Indenture of Trust (Denver Botanic Gardens Parking Facility) (*Amends and Restates 2008B Indenture*), dated the date hereof, by the Trustee.

“2017A Lease” means the Lease Purchase Agreement No. 2017A (Denver Botanic Gardens Parking Facility) (*Amends and Restates 2008B Lease*) dated the date hereof, between the Trust, as lessor, and the City, as lessee.

“Certificate Direct Purchase Agreement” means, together, the “Request for Indicative Term Sheet for Lease Purchase Financing” dated December 9, 2016, and the Initial Purchaser’s Response to such Request dated December 14, 2016, for the direct purchase of the Series 2017A Certificates, in the form of a single term certificate, and the consummation of the transactions contemplated thereunder.

“Certificate Year” has the meaning ascribed to the term under Section 5.03 hereof.

“Chief Financial Officer” means the Chief Financial Officer of the City, as the Manager of Finance *ex-officio* Treasurer, of the City duly appointed pursuant to the Charter or the designee of the Chief Financial Officer.

“City” means the City and County of Denver, Colorado, only in its capacities as lessor under the 2017A Site Lease and as lessee under the 2017A Lease and not in respect of its police powers or any other capacity, power or function of the City.

“Code” means the Internal Revenue Code of 1986, as amended.

“Cooperative Agreement” means the Cooperative Agreement dated April 5, 1991, as amended, between the City and the Denver Botanic Gardens.

“Costs of Execution and Delivery Fund” means the special fund denominated the “2017A Trust, Costs of Execution and Delivery Fund” established with the Trustee created pursuant to Section 3.05 of the 2017A Indenture.

“Denver Botanic Gardens” or “DBG” mean the Denver Botanic Gardens, Inc., a Colorado nonprofit corporation and Code Section 501(c)(3) organization.

“Direct Purchase Fee” means the fee imposed by the Initial Purchaser for services rendered in processing the Refunding Transaction for the City and DBG.

“Escrow Verification Report” means the Escrow Verification Report of Causey Demgen Moore P.C. attached as Exhibit D to the 2017A Indenture.

“Federal Securities” means, as defined in the 2008B Indenture, non-callable bills, certificates of indebtedness, notes or bonds that are direct obligations of, or the principal of and interest on which are unconditionally guaranteed by, the United States of America.

“Initial Purchaser” means Kansas City Financial Corporation, and its successors and assigns, as the initial purchaser and owner of the Series 2017A Certificates, delivered in the form of a single term certificate.

“Issue Date” means the first date on which the Trustee receives the Issue Price of the Series 2017A Certificates in exchange for delivery of the Series 2017A Certificates, which is the dated date of this Tax Certificate.

“Issue Price” means, in respect of the Series 2017A Certificates, \$15,506,673.00, the price paid by the Initial Purchaser, on a direct placement basis; such purchase price was derived through a solicitation by the City for the benefit of DBG.

“Lease Authorizing Ordinance” means the ordinance of the City duly approved and adopted, after second reading thereof, by the City Council at a regular meeting thereof held on February 6, 2017, authorizing the execution and delivery of the 2017A Lease.

“Leased Property” means the Leased Property described as such under the 2017A Lease, including Exhibit A thereto.

“Municipal Advisor” means FirstSouthwest, a Division of Hilltop Securities Inc., as the City’s Independent Municipal Advisor (“financial advisor” under the DRMC of the City) for the Refunding Transaction.

“Net Sale Proceeds” means the Sale Proceeds of the Series 2017A Certificates less the portion of the Sale Proceeds invested in a reasonably required reserve or replacement fund, if any, as defined in Section 1.148-1(b) of the Regulations. Net Sale Proceeds of the Series 2017A Certificates are:

Issue Price	\$15,506,673.00
<u>Less</u> reserve or replacement fund deposit, if any	<u>0.00</u>
“Net Sale Proceeds” (also “Spendable Proceeds”)...	<u>\$15,506,673.00</u>

“Rebate Amount” means, with respect to the Series 2017A Certificates, the amount computed as described in Section 6.02 hereof and with respect to the 2008B Certificates, the amount computed as described in Section 6.2 of the 2008B Tax Certificate.

“Refunding Transaction” means a transaction or series of transactions in which (1) the base rentals for the remaining maximum term of the 2008B Lease are paid by the City on the date of this 2017A Lease, to the Trustee, in its capacity as the trustee for the 2008B Certificates, and deposited (both cash and Federal Securities, as defined in the 2017A Indenture) to the Refunding Transaction Account in the Base Rentals Fund pursuant to the 2008B Indenture in order that the outstanding 2008B Certificates are advance refunded, the 2008B Certificates maturing on and after December 1, 2019, are called for optional redemption on December 1, 2018 and all of the outstanding 2008B Certificates are defeased in full on the date of this 2017A Indenture, (2) the 2008B Lease is amended and restated by the 2017A Lease and the base rentals due thereunder are restructured and (3) the 2008B Site Lease and the 2008B Indenture are correspondingly amended and restated.

“Refunding Transaction Account” means the Refunding Transaction Account within the Base Rentals Fund established pursuant to Section 3.03 of the 2017A Indenture.

“Regulations” means the temporary, proposed or final Income Tax Regulations promulgated by the Department of the Treasury and applicable to the 2017A Lease and the Series 2017A Certificates.

“Sale Proceeds” means the amounts actually or constructively received from the sale of the Series 2017A Certificates, including amounts used to pay Costs of Execution and Delivery of the Series 2017A Certificates. The Sale Proceeds are set forth in Section 3.02 hereof.

“Series 2017A Certificates” means the Certificates of Participation, Series 2017A (Denver Botanic Gardens Parking Facility) dated their date of execution and delivery, executed and delivered pursuant to the 2017A Indenture, the proceeds of which are to be used by the Trust to accomplish the Refunding Transaction.

“Special Counsel” means, together, Becker Stowe Partners LLC and Kline Alvarado Veio, P.C., as co-Special Counsel, or another nationally recognized law firm or law firms with expertise in public finance delivering approving opinions with respect to the execution and delivery of and the excludability from gross income for federal income tax purposes of interest on the Series 2017A Certificates.

“Spendable Proceeds” means Net Sale Proceeds. Spendable Proceeds are as set forth above under definition of “Net Sale Proceeds.”

“State” means the State of Colorado.

“Tax Certificate” means this Tax Certificate.

“Tax-Exempt Permitted Use Arrangement” means any arrangement between (1) the City and a third party for the use of any portion of the Leased Property or (2) the Denver Botanic Gardens, under the Cooperative Agreement, and a third party for the use of any portion of the Leased Property which meets any of the following criteria: (a) use by a nongovernmental person under a “qualified management contract” as that term is defined for purposes of Section 141 of the Code and the regulations, rulings and other guidance issued thereunder; (b) (*inapplicable*); (c) use by a nongovernmental person where the term of the arrangement (including all renewal options) does not exceed a maximum of one hundred (100) actual days of use, if such use is based on uniformly applied rates; provided, however, the use permitted under this subsection (c) is not of the type available to a natural person not engaged in a trade or business; (d) use by a nongovernmental person pursuant to a negotiated arms-length (nonuniform) arrangement where the term of the arrangement (including all renewal options) does not exceed a maximum of fifty (50) actual days of use; or (e) any other arrangement subject to Approval of Special Counsel, including for purposes of this Tax Certificate, but not limited to, any arrangement permitted under Regulation §1.141-3.

“Trust” means the Denver Botanic Gardens Parking Facility Leasing Trust 2008B, the trust initially created under the 2008B Indenture and confirmed and denominated as the “Denver Botanic Gardens Parking Facility Leasing Trust 2017A” under the 2017A Indenture. The Trustee has made certain representations with regard to the Trust on Exhibit F hereto.

“Trustee” means UMB Bank, n.a., solely in its capacity as Trustee of the Trust under the 2017A Indenture, and its successors and assigns.

Section 1.02 Certain Code and Regulation Definitions. In addition to the foregoing definitions, if used herein, the following terms have the meanings ascribed to them in the Regulations (and the Code, where indicated) unless the context hereof clearly requires otherwise:

- (a) available amount, §1.148-1(b);
- (b) bona fide debt service fund, §1.148-1(b);
- (c) bond year, §1.148-1(b);
- (d) capital expenditure, §1.150-1(b);
- (e) commingled fund, §1.148-1(b);
- (f) computation date, §1.148-1(b);
- (g) construction expenditures, §1.148-7(g)(1);
- (h) *de minimis* amount, §1.148-1(b);
- (i) fair market value, §1.148-1(b);
- (j) gross proceeds, §1.148-1(b);
- (k) guaranteed investment contract, §1.148-1(b);
- (l) investment, §1.148-1(b);

- (m) investment proceeds, §1.148-1(b);
- (n) investment property, Code §148(b)(2);
- (o) investment-type property, §1.148-1(b);
- (p) issue, §1.150-1(c);
- (q) issue price, §1.148-1(b);
- (r) multipurpose issue, §1.148-1(b);
- (s) net sale proceeds, §1.148-1(b);
- (t) nonpurpose investment, §1.148-1(b);
- (u) nonpurpose receipts, §1.148-3;
- (v) pre-issuance accrued interest, §1.148-1(b);
- (w) proceeds, §1.148-1(b);
- (x) rebatable arbitrage, §1.148-3;
- (y) related party, §1.150-1(b);
- (z) related use, §1.141-9(b);
- (aa) replacement proceeds, §1.148-1(c);
- (bb) required rebate, §1.148-3;
- (cc) sale proceeds, §1.148-1(b);
- (dd) spendable proceeds, §1.149(g)-1(a)
- (ee) sinking fund, §1.148-1(c)(2);
- (ff) tax-exempt bond financed property, Code §168(g)(5);
- (gg) transferred proceeds, §1.148-1(b);
- (hh) value, §1.148-1(b);
- (ii) working capital, §1.150-1(b);
- (jj) yield, §1.148-1(b).

Section 1.03 Capacity. The undersigned is the Chief Financial Officer of the City and an officer of the City delegated the authority and responsibility for delivering the 2017A Lease. As such, the certifications herein with respect to information pertaining to the City may be relied on as provided by Treas. Reg. § 1.148-2(b)(2)(i).

Section 1.04 Familiarity with Proceedings. The undersigned is familiar with the City's proceedings taken preliminary to the execution and delivery of the 2017A Lease, including the adoption of the Lease Authorizing Ordinance, as described below, pursuant to which the 2017A Lease has been entered into by the City.

Section 1.05 Purpose of Tax Certificate. The City is delivering this Tax Certificate to Becker Stowe Partners LLC and Kline Alvarado Veio, P.C. as co-Special Counsel, with the understanding that Becker Stowe Partners LLC and Kline Alvarado Veio, P.C. will each rely in part upon this Tax Certificate in rendering their respective opinions that the Interest Portion of the Base Rentals payable under the 2017A Lease (and consequently the interest on the Series 2017A Certificates) is excludible from the gross income of the Owners of the Series 2017A Certificates for federal income tax purposes.

Section 1.06 Nature of the Leased Property. The Leased Property has been designed to serve and will be available for use by the City for its governmental purposes for members of the general public on an equal basis. Upon the purchase, transfer or other conveyance of the Trust's leasehold and ownership interests in the Leased Property pursuant to Section 12.2 of the 2017A Lease, the City will own and possess fee simple title to the Leased Property and such Leased Property will continue to be owned by the City. DBG is an organization described in Code Section 501(c)(3) and is not a private foundation as defined in Code Section 509(a). Under Section 1(b) of the Cooperative Agreement, the City retains DBG "...as a private agency, to maintain, manage operate and control..." the Leased Property, among other related City owned and DBG owned properties known as the Denver Botanic Gardens. Section 1(b) of the Cooperative Agreement further provides "[N]one of the rights herein granted to [DBG] are, nor shall they be construed as, a lease, easement, or other interest in land."

ARTICLE 2 THE 2017A LEASE AND THE SERIES 2017A CERTIFICATES

Section 2.01 Purpose of the 2017A Lease and Series 2017A Certificates. The City acknowledges that the Trustee, on behalf of the Trust, is using the proceeds of the Series 2017A Certificates (a) to pay the costs of executing and delivering the 2017A Lease and the Series 2017A Certificates and (b) together with moneys from the 2008B Base Rentals Reserve Fund, to accomplish the Refunding Transaction, as further described in Article 4 herein. No gross proceeds of the Series 2017A Certificates (which include Sale Proceeds, investment proceeds, transferred proceeds, if any, and replacement proceeds) will be used for purposes other than described in this Section.

Section 2.02 Authority. The 2017A Lease is being executed and delivered by the City pursuant to the Lease Authorizing Ordinance of the City. The City acknowledges that the Series 2017A Certificates are being executed and delivered by the Trustee, on behalf of the Trust, under and pursuant to the 2017A Indenture.

Section 2.03 Date of Series 2017A Certificates; Issue Date. The Series 2017A Certificates are dated the date of this Tax Certificate. The "Issue Date" of the Series 2017A Certificates, for federal income tax purposes, is also the date of this Tax Certificate.

Section 2.04 Yield and Issue Price of the Series 2017A Certificates. According to representations by the Initial Purchaser in the Initial Purchaser's Certificate attached as Exhibit A hereto and by the Municipal Advisor in the Certificate of the Municipal Advisor attached as Exhibit B hereto, which the City has no reason to believe are untrue or inaccurate, (a) the yield on the Series 2017A Certificates is 2.5003%, (b) the Series 2017A Certificates constitute "fixed yield bonds" as that term is defined under Treas. Reg. § 1.148-1(b) in that their yield is fixed and determinable on their Issue Date and (c) the first price of the Series 2017A Certificates, constituting the Issue Price as used herein, in respect of the Series 2017A Certificate, is \$15,506,673.00, the price paid by the Initial Purchaser, on a direct placement basis, such purchase price was derived through a solicitation by the City for the benefit of the City and DBG. Therefore, as provided under Treas. Reg. § 1.148-4(b), the yield on the Series 2017A Certificates, as fixed yield bonds, is the discount rate that, when used in computing the present

value of all unconditionally payable payments of principal and interest to be paid on the Series 2017A Certificates and all payments for a “qualified guarantee,” if any, within the meaning of Treas. Reg. § 1.148-4, produces an amount equal to the aggregate “issue price” of the Series 2017A Certificates, based upon semiannual compounding and a 360-day year of twelve 30-day months. For purposes of this Section, unless otherwise stated below, the principal and interest to be paid includes principal and interest determined by assuming that the Series 2017A Certificates are retired on the mandatory sinking fund redemption dates and the final maturity date, and at the stated retirement prices.

**ARTICLE 3
AMOUNT AND DISTRIBUTION OF PROCEEDS**

Section 3.01 Sale to Initial Purchaser. The net amount received by the Trustee, on behalf of the Trust, from the sale of the Series 2017A Certificates to the Initial Purchaser is \$15,429,139.63 (constituting the aggregate principal amount of the Series 2017A Certificates of \$15,506,673.00 less the Initial Purchaser’s Direct Purchase Fee of \$77,533.37).

Section 3.02 Distribution of Sale Proceeds. The Sale Proceeds are expected to be needed and fully expended as follows:

Deposit to Costs of Execution and Delivery		
Fund to pay Costs of Execution and Delivery		
of the Series 2017A Certificates	\$	225,000.31
Direct Purchase Fee		77,533.37
Deposit to Refunding Transaction Account to		
refund the 2008B Certificates		<u>15,204,139.32</u>
Sale Proceeds		<u>\$15,506,673.00</u>

The City acknowledges that the Sale Proceeds deposited to the Costs of Execution and Delivery Account are to be used to pay the costs of executing and delivering the Series 2017A Certificates.

**ARTICLE 4
REFUNDING OF 2008B CERTIFICATES**

Section 4.01 2008B Certificates; Hedge Bonds.

(a) The Series 2008B Certificates were executed and delivered on November 12, 2008, pursuant to the 2008B Indenture to accomplish the 2008B Project. No later than six months after the date of execution and delivery of the 2008B Lease and the 2008B Certificates, the City incurred a substantial binding commitment to a third party to expend at least five percent (5.00%) of the net sale proceeds of the 2008B Certificates on the 2008B Project. The 2008B Project proceeded with due diligence to completion, and such net sale proceeds of the 2008B Certificates were spent on the 2008B Project no later than three years after the date of execution and delivery of the 2008B Lease. The 2008B Project has been completed, moneys in the 2008B

Base Rentals Reserve Fund have been transferred to the Refunding Transaction Account and all related funds and accounts established under the 2008B Indenture have been closed.

(b) The City represents that at least 85% of the spendable proceeds of 2008B Certificates were used to carry out the governmental purposes of the City within three years from the date of execution and delivery of the 2008B Certificates. The City did not invest or cause the investment of more than 50% of the proceeds of the 2008B Certificates in investments having a substantially guaranteed yield of four years or more. Therefore, the 2008B Certificates did not, and the Series 2017A Certificates, which refund the 2008B Certificates, do not, constitute “hedge bonds” within the meaning of Section 149 of the Code.

Section 4.02 Advance Refunding. (a) On the date hereof, as permitted by Section 7.2 of the 2017A Lease and Section 3.01(b) of the 2017A Indenture, the Trustee deposited to the Refunding Transaction Account in the Base Rentals Fund for the Series 2008B Certificates the amount of (a) the Sale Proceeds of the Series 2017A Certificates (net of the Costs of Execution and Delivery of the Series 2017A Certificates, including the Direct Purchase Fee) as described in Section 3.02 above plus (b) all moneys in the 2008B Base Rentals Reserve Fund as of January 31, 2017 (\$1,795,721.29), all consisting of cash and Federal Securities, pursuant to Section 6.2 of the 2008B Lease in the amount of \$16,999,860.61, which together is sufficient to effect the Refunding Transaction. Any remaining moneys in the 2008B Base Rentals Reserve Fund on the date hereof have been transferred to the 2017A Certificates Account.

The City has directed the Trustee, as the 2008B Trustee, to, among other things, deposit and hold the amounts identified above in the Refunding Transaction Account and to apply such amount on the Issue Date towards refunding, on a “advance refunding” basis (as described in Treas. Reg. § 1.150-1(d)(4)), all of the outstanding 2008B Certificates, by paying the principal of and interest on the 2008B Certificates as the same become due either at maturity or by prior redemption on December 1, 2018, such date being the earliest date on which the 2008B Certificates may be redeemed.

(b) The 2008B Certificates are being refunded exclusively to effect a present value savings with respect to the aggregate of the principal of and interest on the 2008B Certificates through lower interest costs. The 2008B Certificates maturing on and after December 1, 2019 are being redeemed on December 1, 2018, which is the first date on which the 2008B Certificates are callable regardless of price.

(c) With the exception of the Refunding Transaction Account and subject to the transfer of moneys from the 2008B Base Rentals Reserve Fund as described in Section 4.02(a) hereof, on the date hereof there are no moneys remaining in the funds and accounts established for the 2008B Certificates and there are no other unspent proceeds of the 2008B Certificates.

Section 4.03 Temporary Period. The temporary period with respect to the proceeds of the Series 2017A Certificates provided by the Regulations is thirty (30) calendar days (as described in Treas. Reg. § 1.148-9(d)(2)(i), commencing on the Issue Date and ending thirty (30) calendar days thereafter.

ARTICLE 5
FUNDS CREATED BY 2017A INDENTURE

Section 5.01 Funds; Revenues. The City is causing the 2008B Trustee to make a deposit to, and hold in trust in, the Refunding Transaction Account, in order to provide for the refunding of the 2008B Certificates in the manner described in Section 6.01(b) of the 2008B Indenture.

In addition, the 2017A Indenture creates the following funds and accounts to be held by the Trustee with respect to the 2017A Lease and the Series 2017A Certificates: (a) the 2017A Certificates Account within the Base Rentals Fund; (b) the Rebate Fund; and (c) the Costs of Execution and Delivery Fund.

Section 5.02 Deposit and Use of Net Sale Proceeds. On the date of execution and delivery of the 2017A Lease, the amount of the Net Sale Proceeds less Costs of Execution and Delivery, including the Direct Purchase Fee, of the 2017A Lease with respect to the Series 2017A Certificates, together with the balance in the 2008B Base Rentals Reserve Fund as of January 31, 2017, will be deposited and used as set forth in Sections 3.02 and 4.02 above.

Section 5.03 2017A Certificates Account. Moneys deposited in the 2017A Certificates Account will be used to pay the principal of and interest on the Series 2017A Certificates. Payments to the 2017A Certificates Account will be made semiannually from Revenues which, in the aggregate, will be sufficient to pay the principal of and interest on the Series 2017A Certificates payable from the 2017A Certificates Account when due.

Under the Code and Treas. Reg. § 1.148-1(b), the term “bond year” means, in reference to a particular obligation,

“... each 1-year period that ends on the day selected by the issuer. The first and last bond years may be short periods. If no day is selected by the issuer before the earlier of the final maturity date of the issue or the date that is 5 years after the issue date, bond years end on each anniversary of the issue date and on the final maturity date.”

For purposes of this Tax Certificate, the term “Certificate Year” shall be defined as and have the same meaning as “bond year” under the Code and Regulations and shall mean the period January 1 through and including the last day of December of any year; provided, however, the first Certificate Year shall be the shorter period commencing on the Issue Date and ending on December 31, 2017, and, provided further, the City may select another Certificate Year if permitted by the Code and Regulations.

The 2017A Certificates Account will be used primarily to achieve a proper matching of revenues with principal and interest payments on the Series 2017A Certificates each Certificate Year. The 2017A Certificates Account will be depleted at least once each Certificate Year, except for a reasonable carryover amount, if any, not to exceed the greater of (a) in the aggregate, one-twelfth of the principal and interest payments on the Series 2017A Certificates for

the immediately preceding Certificate Year, or (b) in the aggregate, the earnings on the 2017A Certificates Account for the immediately preceding Certificate Year.

The City further expects that any moneys deposited in the 2017A Certificates Account will be spent within a 13-month period beginning on the date of deposit and that any amount received from the investment of such moneys will be spent within a one-year period beginning on the date of receipt. Accordingly, such amounts, together with investment earnings thereon, may be invested without regard to the yield on the Series 2017A Certificates for thirteen months after the date of deposit. Earnings on such amounts may be invested without yield restriction for one year after the date of receipt of such earnings.

Section 5.04 Reserve Fund. No reasonably required reserve or replacement fund has been created in respect of the 2017A Lease.

Section 5.05 Costs of Execution and Delivery Fund. The Initial Purchaser imposed a Direct Purchase Fee of \$77,533.37 for services rendered in respect of purchasing the Series 2017A Certificates and has deducted that amount from the total amount paid by it for the purchase of the Series 2017A Certificates. Other costs of executing and delivering the Series 2017A Certificates and refunding the 2008B Certificates have been or will be paid from the Costs of Execution and Delivery Account. Any moneys remaining in the Costs of Execution and Delivery Account on August 16, 2017 (180 calendar days after the Issue Date), will be credited by the Trustee to the 2017A Certificates Account, as required by Section 3.05 of the 2017A Indenture.

Section 5.06 Refunding Transaction Account. The Refunding Transaction Account will be used to accomplish the transfer of a portion of the Sale Proceeds of the Series 2017A Certificates together with the balance in the 2008B Base Rentals Reserve Fund as of January 31, 2017, from the Trustee to the City in order to permit the City to immediately exercise its purchase option with respect to the Leased Property and to accomplish the Refunding Transaction.

Section 5.07 Reserved.

Section 5.08 Other Funds and Accounts. Except as otherwise provided herein, the City has not created or established, and does not expect to create or establish, any sinking fund, pledged fund or other fund, account or subaccount which is reasonably expected to be used to pay principal of or interest on the Series 2017A Certificates.

ARTICLE 6 INVESTMENT AND REBATE COVENANTS

Section 6.01 Investment Covenant. Under the 2017A Lease, the City has certified and covenanted, among other things, that it will not knowingly acknowledge or otherwise cause the investment or use of any moneys related to the 2017A Lease in a manner which will cause the Series 2017A Certificates to be classified as “arbitrage bonds” within the meaning of the Code. In connection with such covenants, but not limited to such covenants, the City has received and reviewed, and represents and covenants that it will comply with and expects that it will so

comply with, the Investment Instructions prepared by Special Counsel with respect to such investment and disposition of moneys on deposit in the various funds and accounts created under the 2017A Indenture, which instructions have been prepared to comply with Section 148 of the Code, including the rebate requirements of Section 148(f) of the Code. The Investment Instructions are attached hereto as Exhibit C and, by this reference, are expressly incorporated herein.

Section 6.02 Rebate Covenant.

(a) Under the 2017A Lease, the City certified and covenanted, among other things, that it will perform or cause to be performed all acts within its power that are or may be necessary to insure that the Interest Portion of the Base Rentals will at all times remain excludible for federal income tax purposes under the Code and the Regulations as presently enacted and construed or as hereafter amended.

In connection with such covenant, the City agrees that it will cause the Rebate Amount, if any, with respect to the Series 2017A Certificates to be determined on each “installment computation date” in the manner required by Treas. Reg. § 1.148-3. For this purpose, an “installment computation date” is any computation date selected by the City, provided the first installment computation date is no later than the fifth anniversary of the Issue Date of the Series 2017A Certificates, a subsequent installment computation date is no later than five years after the previous installment computation date and the final installment computation date is the date that the Series 2017A Certificates are retired. The City hereby acknowledges that the first installment computation date with respect to the Series 2017A Certificates must be no later than December 31, 2021, based on the Certificate Year established in Section 5.03 hereof. The City agrees that, within sixty (60) calendar days of each installment computation date (other than the final installment computation date), it will pay or cause to be paid over to the United States government an amount equal to 90% of the Rebate Amount calculated as of such date, and within sixty (60) calendar days of the final installment computation date, it will pay or cause to be paid over to the United States government an amount equal to 100% of the Rebate Amount calculated as of such date, in the manner and at the place required by Treas. Reg. § 1.148-3.

(b) Under Section IV of the 2008B Tax Certificate, the City has covenanted that it will perform or cause to be performed all acts within its power that are necessary to ensure that the interest portions paid with respect to the 2008B Certificates, as applicable, remain excludible from gross income for federal income tax purposes under the Code and the Regulations. To that end, the City has performed or caused to be performed all calculations of any Rebate Amounts that may be or have become due with respect to such 2008B Certificates and will pay or cause to be paid over to the United States government amounts equal to 100% of the Rebate Amounts calculated as of the final computation date for such 2008B Certificates. The final computation date for the 2008B Certificates, as defined in the 2008B Tax Certificate, is the date that is sixty (60) days following December 1, 2018, by virtue of the exercise of the prior redemption provisions for the 2008B Certificates contained in the 2008B Indenture which is sixty (60) days following the date on which all of the 2008B Certificates will be retired. The City hereby covenants to retain a rebate analyst or a qualified City employee to perform the arbitrage rebate calculations referred to in this paragraph.

ARTICLE 7 GOVERNMENTAL BONDS/QUALIFIED 501(C) BONDS

Section 7.01 No Private Business Use. Except as provided in Section 7.05 below, the City does not expect that, and hereby covenants not to permit, more than 10% of the proceeds relating to the 2017A Lease with respect to the Series 2017A Certificates to be used (directly or indirectly) in a trade or business of nongovernmental persons in a manner that would cause the 2017A Lease with respect to the Series 2017A Certificates to be characterized as “private activity bonds” within the meaning of Section 141 of the Code. For this purpose, a person “uses” such proceeds if (a) it owns or leases all or a portion of the 2008B Project Facilities, (b) it is loaned all or a portion of those proceeds, (c) it has actual or beneficial use of all or a portion of the 2008B Project Facilities pursuant to a management or incentive payment contract, an output contract or another arrangement, or (d) the proceeds are used to satisfy a primary and unconditional obligation of such person to provide such 2008B Project Facilities, unless such use is specifically permitted under federal income tax laws. A person is not treated as using such 2008B Project Facilities refinanced by the Series 2017A Certificates merely because it uses such 2008B Project Facilities as a member of the general public. The City or DBG may sublet portions of the 2008B Project Facilities refinanced by the Series 2017A Certificates to nongovernmental persons for uses that may or may not be “related use” under Section 1.141-9(b) of the Regulations. Notwithstanding the foregoing, if the City enters into any use arrangements, it covenants to enter into only such arrangements that comply with the Code and have been approved by Special Counsel as provided by Section 13.2 of the 2017A Lease.

The City further represents that, except as provided in Section 7.05 below, none of the 2008B Project Facilities refinanced with the Series 2017A Certificates will be subject to any lease, management or service contract (unless such management or service contract complies with the guidelines of Internal Revenue Service Revenue Procedure 16-44 or any successor legal requirements, if applicable) or similar agreement with a nongovernmental person, or any arrangement giving a nongovernmental person certain preferential rights with respect to such 2008B Project Facilities. Public access to and use of such 2008B Project Facilities is reasonably assured. The City or DBG has the right to enter into contracts for janitorial and other services contracts for the maintenance of the 2008B Project Facilities refinanced with the Series 2017A Certificates; provided, however, any such contracts shall be in compliance with the Code (to maintain the tax-exempt status of the Interest Portion of the Base Rentals) and be subject to termination by the Trustee, on behalf of the Trust, if an Event of Nonappropriation or Event of Lease Default shall occur and not be cured.

Section 7.02 No Private Payment or Security. Except as provided in Section 7.05 below, the City does not expect that, and hereby covenants not to permit, more than 10% of the Base Rentals under the 2017A Lease and, consequently, in connection with the Series 2017A Certificates, to be (a) derived (directly or indirectly) from payments in respect of property or borrowed money used or to be used for a private business use, or (b) secured (directly or indirectly) by any interest in property used or to be used for a private business use, or payments in respect of property used or to be used for a private business use, in a manner that would cause the 2017A Lease and, consequently, the Series 2017A Certificates, to be characterized as “private activity bonds” within the meaning of Section 141 of the Code. For this purpose, generally applicable taxes are not taken into account.

Section 7.03 No Private Loan. The City hereby represents that the Sale Proceeds have not been and will not be used (directly or indirectly) to make or finance loans to nongovernmental persons in a manner that would cause the 2017A Lease and, consequently, the Series 2017A Certificates, to be characterized as “private activity bonds” within the meaning of the Code. Loans that enable a borrower to finance any governmental tax or assessment of general application for a specific essential governmental function are not taken into account for this purpose. The City expects that it will have sufficient revenues to pay all Principal Portions and Interest Portions of Base Rentals coming due under the 2017A Lease and, in turn, such amounts will be sufficient for the payments of the principal of and interest with respect to the Series 2017A Certificates as the same become due.

Section 7.04 No Federal Guarantees. There are no federal guarantees within the meaning of the Code with respect to the 2017A Lease or the Series 2017A Certificates.

Section 7.05 Nature of Leased Property; Qualified 501(c)(3) Bonds. Due to the nature of the ownership and use of the Leased Property as described in Section 1.06 of this Tax Certificate, the City elects to treat the 2017A Lease as a “governmental bond” and to qualify the 2017A Lease as a “qualified 501(c)(3) bond”. DBG hereby covenants to (a) maintain its status as a “501(c)(3) organization” or “governmental unit” within the meaning of Code Section 145(a) throughout the term of its use of the Leased Property under the Cooperative Agreement; (b) not become the beneficiary of more than \$150,000,000 of outstanding bonds which are not “qualified hospital bonds under the Code or merge with or otherwise become part of such a beneficiary organization without receiving prior Approval of Special Counsel; (c) not engage in an unrelated trade or business (as defined in Code Section 513(a) and irrespective of whether such organization is subject to tax under Code Section 511) that would affect the tax-exempt status of the 2017A Lease; and (d) for so long as the 2017A Lease remains outstanding DBG shall file a true and accurate Schedule K, or its equivalent, as part of DBG’s annual federal tax returns. In compliance with the requirements of Code Section 147(f) (relating to public approval), the execution and delivery of the 2017A Lease and the related Series 2017A Certificates was approved by the Mayor of the City and County of Denver on February 8, 2017, after a public hearing on February 1, 2017, notice of which was published in *The Daily Journal* on January 17, 2017. See Exhibits F-1 and F-2.

ARTICLE 8 MISCELLANEOUS

Section 8.01 No Abusive Device. The City hereby represents that the 2017A Lease will not be part of a transaction or series of transactions that attempts to circumvent the arbitrage provisions of Section 148 of the Code and the Regulations thereunder, (a) enabling the City to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and (b) overburdening the market for tax-exempt obligations.

Section 8.02 Single Issue. The City hereby represents that there are no other obligations of the City which are to be (a) sold within fifteen (15) calendar days of the date on which the final terms of the 2017A Lease were determined by the sale of the Series 2017A Certificates, (b) sold pursuant to the same plan of financing as the 2017A Lease and, in turn, the Series 2017A Certificates and (c) paid from substantially the same source of funds as the Base Rentals and, in turn, the Series 2017A Certificates.

Section 8.03 No Overissuance. The City hereby represents that the total aggregate Principal Portion of Base Rentals due under the 2017A Lease at the date hereof, together with anticipated investment income thereon, will not exceed the amount necessary for the purpose of the 2017A Lease with respect to the Series 2017A Certificates.

Section 8.04 Reasonable Maturity; First Call Date Limitation.

(a) The weighted average maturity of the Series 2017A Certificates is 7.4613 years (as calculated by the Municipal Advisor in the Certificate of the Municipal Advisor attached hereto as Exhibit A), and the average reasonably expected economic life of the property or facilities refinanced with the Proceeds of the Series 2017A Certificates, measured from the later of the Issue Date or the date on which such property or facilities will be to be placed in service, is at least 25 years. Thus, the average maturity of the Series 2017A Certificates does not exceed 120% of the remaining average reasonably expected economic life of the property or facilities refinanced with the Proceeds of the Series 2017A Certificates, and, therefore, the term of the Series 2017A Certificates is not longer than is reasonably necessary for the governmental purposes of the Series 2017A Certificates, all within the meaning of Treas. Reg. § 1.141-12(a).

(b) The City acknowledges that the period between the issue date in respect of the Series 2008B Certificates and the final maturity or prior redemption date of the Series 2008B Certificates is not more than 10½ years. The special limitation set forth in Treas. Reg. § 1.141-12(d)(4) is therefore satisfied with respect to the establishment, if necessary, of defeasance escrows for remedial action purposes.

Section 8.05 Sale of 2008B Project Facilities. The City hereby represents that it does not expect to cause the sale or other disposition of the 2008B Project Facilities refinanced by the Series 2017A Certificates prior to the end of the final stated Renewal Term of the 2017A Lease Term and, in turn, the final maturity date of the Series 2017A Certificates.

The City hereby represents that it does not expect to sell or otherwise dispose of all or substantially all of the property or facilities refinanced by the Proceeds of the Series 2017A Certificates prior to the satisfaction and discharge of its obligations under the 2017A Lease with respect to the Series 2017A Certificates. In the event the City determines to sell or otherwise dispose of any of such property or facilities prior to the satisfaction and discharge of its obligations under the 2017A Lease with respect to the Series 2017A Certificates, the City will first cause to be delivered an opinion of Special Counsel that such sale or disposition will not adversely affect the federal tax status of the Interest Portion of Base Rentals due under the Lease.

Section 8.06 Record Retention. The City and DBG will maintain sufficient records to demonstrate compliance with all covenants set forth herein to support the continued excludability

of the Interest Portion of Base Rentals due under the 2017A Lease from gross income for federal income tax purposes, and to show that all tax returns related to the 2017A Lease with respect to the Series 2017A Certificates submitted or required to be submitted to the Internal Revenue Service are correct and timely filed. Such records must include but are not limited to: basic records relating to the 2017A Lease transaction; documentation evidencing the expenditure of Proceeds of the Series 2017A Certificates; documentation evidencing the use of property financed with Proceeds of the Series 2017A Certificates by public and private entities (including copies of leases, management contracts and research agreements); documentation evidencing all sources of payment or security for the Series 2017A Certificates; and documentation pertaining to any investment of Proceeds of the Series 2017A Certificates. Such records shall be kept for at least as long as the Series 2017A Certificates are outstanding, plus the period ending three years after the latest of the final payment date of the Series 2017A Certificates or the final payment date of any obligations or series of obligations executed and delivered to refund directly or indirectly all or any portion of the Series 2017A Certificates or for such longer period as may be required by this Tax Certificate.

Section 8.07 Internal Revenue Service Forms 8038-G and 8038. The City has provided all information relating to it needed to file the information reports (Form 8038-G and Form 8038) with respect to the 2017A Lease and, in turn, the Series 2017A Certificates, required by Section 149(e) of the Code. The information contained in such information report is accurate as of the date hereof. The City will cooperate with appropriate persons to make such additional filings or reports as may be required by the Code and the Regulations. The information relating to the City needed to file Forms 8038-G and 8038 is set forth on Exhibit D and Exhibit E, respectively, attached hereto.

Section 8.08 Certification. This Tax Certificate is being delivered pursuant to Treas. Reg. § 1.148-2 for the purpose of setting forth facts, estimates and expectations of the City on the date hereof regarding the amount and use of the Sale Proceeds and certain other federal income tax matters. The factual representations contained herein are true and correct, and, to the best of our knowledge, information and belief, the expectations contained herein are reasonable. On the basis of the foregoing, it is not expected that the Sale Proceeds will be used in a manner that would cause the 2017A Lease, and consequently the Series 2017A Certificates, to be “arbitrage bonds” under Sections 103 and 148 of the Code and the Regulations thereunder, and to the best of our knowledge and belief there are no other facts, estimates or circumstances that would materially change the foregoing conclusion.

Section 8.09 Written Policies and Procedures. The City has adopted post-issuance compliance procedures and hereby covenants to comply with the procedures set forth therein. The City’s post-issuance compliance procedures are part of the City’s Debt Policy and can be accessed on the City’s website at: <https://www.denvergov.org/content/denvergov/en/denver-department-of-finance/cash-risk-capital-funding/capital-funding.html>.

[Signature pages follow]

IN WITNESS WHEREOF, the City has caused this Tax Certificate to be executed by its duly authorized representative on the date first above written.

**CITY AND COUNTY OF DENVER,
COLORADO**

By: 
Chief Financial Officer/Manager of Finance

IN WITNESS WHEREOF, the Denver Botanic Gardens has caused this Tax Certificate to be executed by its duly authorized representative on the date first above written.

DENVER BOTANIC GARDENS, INC.
a Colorado nonprofit corporation

By: 

Chief Executive Officer

**EXHIBIT A
INITIAL PURCHASER'S CERTIFICATE**

**\$15,506,673
CERTIFICATES OF PARTICIPATION, SERIES 2017A
(Denver Botanic Gardens Parking Facility)
Evidencing Proportionate Interests in the Base Rentals and Other Revenues
Under a Lease Purchase Agreement, No. 2017A
between Denver Botanic Gardens Parking Facility Leasing Trust 2017A, as Lessor,
and the City and County of Denver, Colorado, as Lessee**

The undersigned representative of Kansas City Financial Corporation (the "Initial Purchaser") hereby certifies in connection with the above captioned certificates of participation (the "Series 2017A Certificates") in the aggregate principal amount of \$15,506,673 executed and delivered pursuant to a Declaration and Indenture of Trust (Denver Botanic Gardens Parking Facility) dated its date of delivery (the "2017A Indenture") by UMB Bank, n.a., Denver, Colorado, as trustee (the "Trustee"), that:

1. We acknowledge receipt of the Series 2017A Certificates in the aggregate principal amount of \$15,506,673, in the form of a single term certificate bearing interest and maturing as provided in the 2017A Indenture, and such Series 2017A Certificates being in the denomination and registered in the name of the Initial Purchaser, as requested by us.
2. A lease purchase transaction was proposed by the City and County of Denver, Colorado (the "City") for the benefit of the City and Denver Botanic Gardens ("DBG") to effect the advance refunding of the Lease Purchase Agreement No. 2008B (Denver Botanic Gardens Parking Facility) dated as of November 12, 2008 (the "2008B Lease") and the related Certificates of Participation described above (the "Series 2008B Certificates"); the request for proposal resulted in the Certificate Direct Purchase Agreement described and defined in the Tax Certificate to which this Purchaser's Certificate is attached.
3. The "Issue Price" in respect of the Series 2017A Certificates, is \$15,506,673, the price paid by the undersigned Initial Purchaser under the Certificate Direct Purchase Agreement, on a direct placement basis.

IN WITNESS WHEREOF, I have hereunto set my hand this February 16, 2017.

KANSAS CITY FINANCIAL CORPORATION

By: 
Name: Leo Nunnink
Title: President

EXHIBIT B
CERTIFICATE OF THE MUNICIPAL ADVISOR

February 16, 2017

City and County of Denver, Colorado, as lessee
UMB Bank, n.a., as trustee
Becker Stowe Partners LLC
Kline Alvarado Veio, P.C.

Re: Certificates of Participation, Series 2017A (Denver Botanic Gardens Parking Facility) Evidencing a Proportionate Interest in the Base Rentals and other Revenues under Lease Purchase Agreement No. 2017A dated the date hereof between Denver Public Facilities Leasing Trust 2017A, as lessor, and the City and County of Denver, Colorado, as lessee

Ladies and Gentlemen:

We are serving as the municipal advisor and the financial advisor to the City (the "Municipal Advisor") in connection with the execution and delivery of the above captioned certificates (the "Series 2017A Certificates"). The Series 2017A Certificates are being executed and delivered on the date hereof pursuant to a Declaration and Indenture of Trust (Denver Botanic Gardens Parking Facility) dated the date hereof (the "2017A Indenture") of UMB Bank, n.a., as trustee. The Series 2017A Certificates were sold to Kansas City Financial Corporation as set forth in the Certificate Direct Purchase Agreement, from the Trustee on behalf of the Trust. All capitalized terms used and not otherwise defined herein have the same meaning as set forth in the Tax Certificate executed by the City on the date hereof relating to the Series 2017A Certificates (the "Tax Certificate") to which this Certificate of the Municipal Advisor is attached as Exhibit B. In connection with the execution and delivery of the Series 2017A Certificates on the date hereof, we hereby certify, on behalf of the Municipal Advisor, as follows:

1. Based on our computations and our records, the yield on the Series 2017A Certificates is 2.5003%. Such yield has been calculated in accordance with the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder (the "Regulations"). The Series 2017A Certificates constitute "fixed yield bonds" as that term is defined under Treas. Reg. § 1.148 1(b) in that their yield is fixed and determinable on their Issue Date. Therefore, as provided under Treas. Reg. § 1.148-4(d), the yield on the Series 2017A Certificates, as fixed rate obligations, is the discount rate that, when used in computing the present value of all unconditionally payable payments of principal and interest to be paid on such Series 2017A Certificates and all payments for a "qualified guarantee," if any, within the meaning of Treas. Reg. § 1.148-4, produces an amount equal to the aggregate "issue price" of such Series 2017A Certificates, based upon semiannual compounding and a 360-day year of twelve 30-day months.

2. Based on our computations and our records, the weighted average maturity of the Series 2017A Certificates is 7.4613 years.

The Municipal Advisor understands and acknowledges that this Certificate of the Municipal Advisor will form a part of the basis for the opinion, dated the date hereof, of Becker Stowe Partners LLC, co-Special Counsel, and Kline Alvarado Veio, P.C., co-Special Counsel, to the effect that the Interest Portions of the Base Rentals payable under the 2017A Lease and with respect to the Series 2017A Certificates is excludible from the gross income of the recipients thereof for purposes of federal income taxation under existing laws, regulations, rulings and judicial decisions.

**FIRSTSOUTHWEST, A DIVISION OF
HILLTOP SECURITIES**

By: 
Name: Jason Simmons
Title: Director

EXHIBIT C
INVESTMENT INSTRUCTIONS

February 16, 2017

City and County of Denver, Colorado, as lessee
UMB Bank, n.a., as trustee

Re: Certificates of Participation, Series 2017A (Denver Botanic Gardens Parking Facility) Evidencing a Proportionate Interest in the Base Rentals and other Revenues under a Lease Purchase Agreement No. 2017A dated the date hereof between Denver Botanic Gardens Parking Facilities Leasing Trust 2017A (*Formerly Known as Denver Botanic Gardens Parking Facilities Leasing Trust 2008*), as lessor, and the City and County of Denver, Colorado, as lessee

Ladies and Gentlemen:

The purpose of these investment instructions (the “Instructions”) is to assure that the investment of moneys in the funds and accounts described herein will comply with the arbitrage limitations imposed by Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations thereunder (the “Regulations”), and to further define and explain terms used in certain of the tax covenants in the 2017A Lease and in the 2017A Indenture. These Instructions also implement the investment provisions of the 2017A Indenture and the Tax Certificate (the “Tax Certificate”) executed by the City and County of Denver, Colorado (the “City”) and Denver Botanic Gardens, Inc., a Colorado nonprofit corporation and Internal Revenue Code Section 501(c)(3) organization (“Denver Botanic Gardens” or “DBG”) on the date hereof and constitute the “instructions” referred to in Section 5.02 of the 2017A Indenture. The Series 2017A Certificates are being executed, sold and delivered, in part, to refund, on an “advance refunding” basis, all of the 2008B Certificates, all as described in more detail in the Tax Certificate.

Capitalized terms used and not otherwise defined herein have the same meaning as set forth in the Tax Certificate to which these Instructions are attached as Exhibit C. The financial information contained herein with respect to the 2017A Lease and the Series 2017A Certificates is derived from representations of the City, DBG, the Initial Purchaser and the Municipal Advisor in connection with the 2017A Lease and the Series 2017A Certificates.

Section 1. Computation of Yield. For purposes of these Instructions, the term “yield” has the meaning set forth in the Regulations. The Regulations provide that the term “yield” means that yield which when used in computing the present value of all payments of principal and interest to be paid on an obligation produces an amount equal to the aggregate “issue price” of such obligation. The yield of the Series 2017A Certificates and the yield of obligations acquired with moneys described in these Instructions is computed by using the same frequency of interest compounding. We are relying on the representations of the Initial Purchaser, that issue price for the Series 2017A Certificates is \$15,506,673, and, on the computations of the Municipal Advisor, that the corresponding yield on the Series 2017A

Certificates is 2.5003% per annum computed as of the Issue Date of the Series 2017A Certificates.

Section 2. Investments – General. If the yield of an investment obligation is restricted to a yield not in excess of either the yield of the Series 2017A Certificates or 1/8% greater than the yield on the Series 2017A Certificates, the yield must be based on the market price of the investment obligation on an established market. This means that you cannot pay a premium to adjust the yield and that you cannot accept a lower interest rate than is usually paid. Currently, if an obligation cannot be purchased on an established market or a bona fide bid price cannot be established at a yield that does not exceed the target restricted yield, you are limited (a) to acquiring United States Treasury Certificates of Indebtedness, Notes and Bonds-State and Local Government Series (“SLGS”) that yield no more than the target restricted yield or (b) to making yield reduction payments as provided in Treas. Reg. § 1.148-5(c). SLGS, when available, are available at the Bureau of Public Debt in Parkersburg, West Virginia.

Section 3. 2017A Certificates Account.

(a) For a period of 13 months after the date of receipt, moneys that are deposited in the 2017A Certificates Account for the purpose of paying Base Rentals on the 2017A Lease, and consequently principal of and interest on the Series 2017A Certificates, may be invested in obligations that bear a yield in excess of the Series 2017A Certificates. Interest earnings from the investment of moneys on deposit in the 2017A Certificates Account must be used before any other moneys in the 2017A Certificates Account to pay the Base Rentals on the 2017A Lease, and consequently principal of or interest on the Series 2017A Certificates. Pending disbursement to pay such Base Rentals, such interest earnings may be invested in obligations that bear a yield in excess of the yield of the Series 2017A Certificates.

(b) Any moneys deposited in the 2017A Certificates Account that have been held or are expected to be held for more than 13 months from the date of receipt under the 2017A Indenture may not be invested in obligations that bear a yield in excess of the yield of the Series 2017A Certificates, to the extent that such amount exceeds the greater of (i) one-twelfth of the debt service on the Series 2017A Certificates for the immediately preceding Certificate Year or (ii) the earnings on such portion of the 2017A Certificates Account for the immediately preceding Certificate Year.

(c) In accordance with Section 3.05 of the 2017A Indenture, the Trustee is to transfer all moneys remaining in the Costs of Execution and Delivery Fund to the credit of the 2017A Certificates Account upon payment in full of all Costs of Execution and Delivery of the 2017A Lease and the Series 2017A Certificates, as directed in writing by the Chief Financial Officer, and in no event later than 180 calendar days after the date of execution and delivery of the 2017A Lease. Such moneys are to be invested and subject to the applicable temporary period restrictions as provided above and below for all other moneys in the 2017A Certificates Account.

Section 4. Costs of Execution and Delivery Fund. Gross proceeds of the Series 2017A Certificates (which includes estimated investment proceeds less any amounts deposited to a reasonably required reserve fund, if any) to be expended for costs of executing and delivering the 2017A Lease and the Series 2017A Certificates may be invested in obligations that bear a

yield in excess of the yield of the Series 2017A Certificates. The period of unrestricted investment of such gross proceeds ends thirteen months after the Issue Date. After the period of unrestricted yield, any such gross proceeds of the Series 2017A Certificates must be invested in obligations that bear a yield equal to, or less than one-eighth of one percent (0.125%) greater than, the yield of the Series 2017A Certificates or in obligations described in Section 103 of the Code, the interest on which is not a specific preference item for purposes of the federal alternative minimum tax.

Section 5. Refunding Transaction Account. As described in more detail in Section 5.06 of the Tax Certificate, the Refunding Transaction Account will be used to accomplish the transfer from the Trustee to the City of the Net Sale Proceeds in order to permit the City to immediately exercise its purchase option with respect to the Leased Property and to accomplish the Refunding Transaction. The City does not expect any moneys to remain on deposit in the Refunding Transaction Account after December 1, 2018. In the event any moneys unexpectedly remain on deposit in the Refunding Transaction Account and are not needed for the purpose described in Section 5.06 of the Tax Certificate, the City will cause the Trustee to transfer such moneys to the 2017A Certificates Account and invest such moneys as provided in Section 3 for all other moneys in the 2017A Certificates Account.

Section 6. Rebate Requirement. At the end of each and every fifth Certificate Year (each fifth last day of December) during which the Series 2017A Certificates are outstanding (beginning December 31, 2021) and upon the final maturity date of the Series 2017A Certificates (December 1, 2028), unless the Series 2017A Certificates are earlier redeemed in their entirety (each of such dates, a Computation Date), the Rebate Amount, if any, to be deposited to the Rebate Fund established pursuant to the 2017A Indenture is to be calculated by a rebate compliance analyst pursuant to the Tax Certificate. The Rebate Amount is defined as:

The excess of (a) the aggregate amount earned for the period from the Issue Date of the Series 2017A Certificates to the Computation Date on all investments in which any moneys in the funds and accounts described in the 2017A Indenture are invested over (b) the amount that would have been earned for such period if the yield on such investments had been equal to the yield of the Series 2017A Certificates plus interest earned on such excess.

Investment earnings from gross proceeds of the Series 2017A Certificates deposited in the Rebate Fund may be invested in the same manner as amounts described in Section 4 (2017A Costs of Execution and Delivery Account) above. Other City moneys, if any, deposited in the Rebate Fund may be invested without regard to investment yield limitation.

[Remainder of this page intentionally left blank.]

Section 8. Summary of Applicable Yield Restrictions. The following yield restrictions shall apply to the proceeds of the Series 2017A Certificates:

SUMMARY OF APPLICABLE YIELD RESTRICTIONS

Fund, Account or other Source	Temporary Period of Unrestricted Investment	Restriction After Temporary Period	Excepted from Rebate (Y/N)
2017A Certificates Account	13 months	Series 2017A Certificates Yield	Y ¹
Rebate Fund	N/A	N/A ²	N
Investment Proceeds	1 year from receipt	Certificates Yield	N
Refunding Transaction Account	30 days	Series 2017A Certificates yield	N

¹ The earnings on the 2017A Certificates Account (so long as it satisfies the test for a “bona fide debt service fund” under the Code and Regulations) are not taken into account in computing the arbitrage rebate liability for the Series 2017A Certificates if either (a) the gross earnings on the 2017A Certificates Account for the Certificate Year is less than \$100,000 or (b) the issue is a long-term, fixed rate governmental “bond” issue (*i.e.* the issue has an average maturity of at least five years and each of the obligations that are part of such issue are neither “private activity bonds” nor have rates of interest that vary during the term of the issue).

² See Investment Instructions in Section 7 (Rebate Requirement).

Section 9. Other Tax Compliance Requirements. The Tax Certificate sets forth additional constraints on the use of proceeds of the Series 2017A Certificates that you must observe in order to preserve the excludibility of the Interest Portion of Base Rentals due under the 2017A Lease, and consequently the interest on the Series 2017A Certificates, from gross income for federal income tax purposes.

Section 10. Change in Law. The Instructions set forth herein are based on law in effect as of this date, and we undertake no obligation to monitor or update the status of these Instructions. Statutory or regulatory changes, including, but not limited to, clarifying Regulations, may affect the Instructions contained herein. Pursuant to the Tax Certificate, the City is bound to take all actions necessary to maintain the tax-exempt status of the Interest Portion of Base Rentals due under the 2017A Lease, and consequently the interest on the Series 2017A Certificates, from gross income for federal income tax purposes. Accordingly, the City should retain counsel or other experts from time to time to ensure compliance, in a timely fashion, with the tax covenants.

* * *

EXHIBIT D
INFORMATION FOR FORM 8038-G

(Attached hereto)

* * *

Form **8038-G**
 (Rev. September 2011)
 Department of the Treasury
 Internal Revenue Service

Information Return for Tax-Exempt Governmental Obligations

► Under Internal Revenue Code section 149(e)
 ► See separate instructions.
Caution: If the issue price is under \$100,000, use Form 8038-GC.

OMB No. 1545-0720

Part I Reporting Authority		If Amended Return, check here <input type="checkbox"/>
1 Issuer's name City and County of Denver, Colorado		2 Issuer's employer identification number (EIN) 84-6000580
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a
4 Number and street (or P.O. box if mail is not delivered to street address) 201 W. Colfax Ave., Dept 1010	Room/suite	5 Report number (For IRS Use Only) 3
6 City, town, or post office, state, and ZIP code Denver, CO 80202		7 Date of issue 02/16/2017
8 Name of issue Certificates of Participation, Series 2017A		9 CUSIP number N/A
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions) Robert O. Gibson, Manager of Cash, Risk and Capital Funding		10b Telephone number of officer or other employee shown on 10a 720-913-9383

Part II Type of Issue (enter the issue price). See the instructions and attach schedule.		
11 Education	11	
12 Health and hospital	12	
13 Transportation	13	
14 Public safety	14	
15 Environment (including sewage bonds)	15	
16 Housing	16	
17 Utilities	17	
18 Other. Describe ► Public Parking Facility	18	15,506,673 00
19 If obligations are TANs or RANs, check only box 19a		<input type="checkbox"/>
If obligations are BANs, check only box 19b		<input type="checkbox"/>
20 If obligations are in the form of a lease or installment sale, check box		<input type="checkbox"/>

Part III Description of Obligations. Complete for the entire issue for which this form is being filed.					
	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	12/01/2028	\$ 15,506,673.00	\$ 15,506,673.00	7.4613 years	2.5003 %

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)					
22	Proceeds used for accrued interest	22			00
23	Issue price of entire issue (enter amount from line 21, column (b))	23	15,506,673		00
24	Proceeds used for bond issuance costs (including underwriters' discount)	24	302,533	68	
25	Proceeds used for credit enhancement	25		00	
26	Proceeds allocated to reasonably required reserve or replacement fund	26		00	
27	Proceeds used to currently refund prior issues	27		00	
28	Proceeds used to advance refund prior issues	28	15,204,139	32	
29	Total (add lines 24 through 28)	29	15,506,673		00
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30			00

Part V Description of Refunded Bonds. Complete this part only for refunding bonds.		
31	Enter the remaining weighted average maturity of the bonds to be currently refunded	_____ years
32	Enter the remaining weighted average maturity of the bonds to be advance refunded	7.6569 years
33	Enter the last date on which the refunded bonds will be called (MM/DD/YYYY)	12/01/2018
34	Enter the date(s) the refunded bonds were issued ► (MM/DD/YYYY)	11/12/2008

Part VI Miscellaneous

35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35		
36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions)	36a		
b Enter the final maturity date of the GIC ▶ _____			
c Enter the name of the GIC provider ▶ _____			
37 Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units	37		
38a If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the following information:			
b Enter the date of the master pool obligation ▶ _____			
c Enter the EIN of the issuer of the master pool obligation ▶ _____			
d Enter the name of the issuer of the master pool obligation ▶ _____			
39 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box			<input type="checkbox"/>
40 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box			<input type="checkbox"/>
41a If the issuer has identified a hedge, check here <input type="checkbox"/> and enter the following information:			
b Name of hedge provider ▶ _____			
c Type of hedge ▶ _____			
d Term of hedge ▶ _____			
42 If the issuer has superintegrated the hedge, check box			<input type="checkbox"/>
43 If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box			<input checked="" type="checkbox"/>
44 If the issuer has established written procedures to monitor the requirements of section 148, check box			<input checked="" type="checkbox"/>
45a If some portion of the proceeds was used to reimburse expenditures, check here <input type="checkbox"/> and enter the amount of reimbursement ▶ _____			
b Enter the date the official intent was adopted ▶ _____			

Signature and Consent	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.		
		Date	Brendan J. Hanlon, Chief Financial Officer
	Signature of issuer's authorized representative		Type or print name and title

Paid Preparer Use Only	Print/Type preparer's name Erick D. Stowe	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Firm's name ▶ Becker Stowe Partners LLC	Firm's EIN ▶			
	Firm's address ▶ 1600 Broadway, Suite 1600, Denver, CO 80202-4927	Phone no. 303-953-8335			

EXHIBIT E
INFORMATION FOR FORM 8038

(Attached hereto)

* * *

Form **8038**
(Rev. April 2011)
Department of the Treasury
Internal Revenue Service

**Information Return for Tax-Exempt
Private Activity Bond Issues**
(Under Internal Revenue Code section 149(e))
▶ See separate instructions.

OMB No. 1545-0720

Part I Reporting Authority		Check if Amended Return <input type="checkbox"/>
1 Issuer's name City and County of Denver, Colorado		2 Issuer's employer identification number 84-6000580
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a
4 Number and street (or P.O. box if mail is not delivered to street address) 201 W. Colfax Ave., Dept 1010	Room/suite	5 Report number (For IRS Use Only) <input checked="" type="checkbox"/> 1 <input type="checkbox"/> <input type="checkbox"/>
6 City, town, or post office, state, and ZIP code Denver, CO 80202		7 Date of issue (MM/DD/YYYY) 02/16/2017
8 Name of issue Certificates of Participation, Series 2017A		9 CUSIP number N/A
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information Robert O. Gibson, Manager of Cash, Risk and Capital Funding		10b Telephone number of officer or other employee shown on 10a 720-913-9383

Part II Type of Issue (Enter the issue price.)		Issue Price
11 Exempt facility bond:		
a Airport (sections 142(a)(1) and 142(c))	11a	
b Docks and wharves (sections 142(a)(2) and 142(c))	11b	
c Water furnishing facilities (sections 142(a)(4) and 142(e))	11c	
d Sewage facilities (section 142(a)(5))	11d	
e Solid waste disposal facilities (section 142(a)(6))	11e	
f Qualified residential rental projects (sections 142(a)(7) and 142(d)) (see instructions)	11f	
Meeting 20–50 test (section 142(d)(1)(A)) <input type="checkbox"/>		
Meeting 40–60 test (section 142(d)(1)(B)) <input type="checkbox"/>		
Meeting 25–60 test (NYC only) (section 142(d)(6)) <input type="checkbox"/>		
Has an election been made for deep rent skewing (section 142(d)(4)(B))? <input type="checkbox"/> Yes <input type="checkbox"/> No		
g Facilities for the local furnishing of electric energy or gas (sections 142(a)(8) and 142(f))	11g	
h Facilities allowed under a transitional rule of the Tax Reform Act of 1986 (see instructions)	11h	
Facility type _____		
1986 Act section _____		
i Qualified enterprise zone facility bonds (section 1394) (see instructions)	11i	
j Qualified empowerment zone facility bonds (section 1394(f)) (see instructions)	11j	
k District of Columbia Enterprise Zone facility bonds (section 1400A)	11k	
l Qualified public educational facility bonds (sections 142(a)(13) and 142(k))	11l	
m Qualified green building and sustainable design projects (sections 142(a)(14) and 142(l))	11m	
n Qualified highway or surface freight transfer facilities (sections 142(a)(15) and 142(m))	11n	
o Other (see instructions) _____		
p Qualified New York Liberty Zone bonds (section 1400L(d)) _____	11p	
q Other (see instructions) _____	11q	
12a Qualified mortgage bond (section 143(a))	12a	
b Other (see instructions) _____	12b	
13 Qualified veterans' mortgage bond (section 143(b)) (see instructions) ▶	13	
Check the box if you elect to rebate arbitrage profits to the United States <input type="checkbox"/>		
14 Qualified small issue bond (section 144(a)) (see instructions) ▶	14	
Check the box for \$10 million small issue exemption <input type="checkbox"/>		
15 Qualified student loan bond (section 144(b))	15	
16 Qualified redevelopment bond (section 144(c))	16	
17 Qualified hospital bond (section 145(c)) (attach schedule—see instructions)	17	
18 Qualified 501(c)(3) nonhospital bond (section 145(b)) (attach schedule—see instructions)	18	15,506,673.00
Check box if 95% or more of net proceeds will be used only for capital expenditures ▶ <input type="checkbox"/>		
19 Nongovernmental output property bond (treated as private activity bond) (section 141(d))	19	
20a Other (see instructions) _____		
b New York Liberty Zone advance refunding bond (section 1400L(e)) (see instructions) _____	20b	
c Other. Describe (see instructions) ▶ _____	20c	

Part III Description of Bonds (Complete for the entire issue for which this form is being filed.)

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	12/01/2028	\$ 15,506,673.00	\$ 15,506,673.00	7.4613 years	2.5003 %

Part IV Uses of Proceeds of Issue (including underwriters' discount)

	Amount
22 Proceeds used for accrued interest	00
23 Issue price of entire issue (enter amount from line 21, column (b))	15,506,673.00
24 Proceeds used for bond issuance costs (including underwriters' discount)	302,533.68
25 Proceeds used for credit enhancement	00
26 Proceeds allocated to reasonably required reserve or replacement fund	00
27 Proceeds used to currently refund prior issue (complete Part VI)	00
28 Proceeds used to advance refund prior issue (complete Part VI)	15,204,139.32
29 Add lines 24 through 28	15,506,673.00
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	00

Part V Description of Property Financed by Nonrefunding Proceeds

Caution: The total of lines 31a through e below must equal line 30 above. Do not complete for qualified student loan bonds, qualified mortgage bonds, or qualified veterans' mortgage bonds.

	Amount
31 Type of Property Financed by Nonrefunding Proceeds:	
a Land	31a
b Buildings and structures	31b
c Equipment with recovery period of more than 5 years	31c
d Equipment with recovery period of 5 years or less	31d
e Other. Describe (see instructions)	31e

32 North American Industry Classification System (NAICS) of the projects financed by nonrefunding proceeds.

	NAICS Code	Amount of nonrefunding proceeds		NAICS Code	Amount of nonrefunding proceeds
a		\$	c		\$
b		\$	d		\$

Part VI Description of Refunded Bonds (Complete this part only for refunding bonds.)

33 Enter the remaining weighted average maturity of the bonds to be currently refunded	years
34 Enter the remaining weighted average maturity of the bonds to be advance refunded	7.6569 years
35 Enter the last date on which the refunded bonds will be called	12 / 01 / 2018
36 Enter the date(s) the refunded bonds were issued	11/12/2008

Part VII Miscellaneous

- 37 Name of governmental unit(s) approving issue (see the instructions) **Approved by Mayor of City and County of Denver 02/08/17 following public hearing on 02/01/17**
- 38 Check the box if you have designated any issue under section 265(b)(3)(B)(i)(III)
- 39 Check the box if you have elected to pay a penalty in lieu of arbitrage rebate
- 40a Check the box if you have identified a hedge and enter the following information
- b Name of hedge provider _____
- c Type of hedge
- d Term of hedge
- 41 Check the box if the hedge is superintegrated
- 42a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC)
- b Enter the final maturity date of the GIC
- c Enter the name of the GIC provider
- 43 Check the box if the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated in accordance with the requirements under the Code and Regulations (see instructions)
- 44 Check the box if the issuer has established written procedures to monitor the requirements of section 148
- 45a Enter the amount of reimbursement if some portion of the proceeds was used to reimburse expenditures
- b Enter the date the official intent was adopted
- 46 Check the box if the issue is comprised of qualified redevelopment, qualified small issue, or exempt facilities bonds and provide name and EIN of the primary private user
- Name EIN

Part VIII Volume Caps		Amount
47	Amount of state volume cap allocated to the issuer. Attach copy of state certification	47 0
48	Amount of issue subject to the unified state volume cap	48 0
49	Amount of issue not subject to the unified state volume cap or other volume limitations:	49 0
a	Of bonds for governmentally owned solid waste facilities, airports, docks, wharves, environmental enhancements of hydroelectric generating facilities, or high-speed intercity rail facilities	49a 0
b	Under a carryforward election. Attach a copy of Form 8328 to this return	49b 0
c	Under transitional rules of the Tax Reform Act of 1986. Enter Act section ▶	49c 0
d	Under the exception for current refunding (section 146(i) and section 1313(a) of the Tax Reform Act of 1986)	49d 0
50a	Amount of issue of qualified veterans' mortgage bonds	50a 0
b	Enter the state limit on qualified veterans' mortgage bonds	50b 0
51a	Amount of section 1394(f) volume cap allocated to issuer. Attach copy of local government certification	51a 0
b	Name of empowerment zone ▶	
52	Amount of section 142(k)(5) volume cap allocated to issuer. Attach copy of state certification	52 0

Signature and Consent Under penalties of perjury, I declare that I have examined this return, and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person(s) that I have authorized above.

Signature of issuer's authorized representative: _____ Date: _____

Brendan J. Hanlon, Chief Financial Officer
Type or print name and title

Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	Preparer's PTIN
	Erick D. Stowe				
	Firm's name ▶ Becker Stowe Partners LLC	Firm's EIN ▶			
	Firm's address ▶ 1600 Broadway, Suite 1600, Denver, CO 80202-4927	Phone no.		303-953-8335	

SCHEDULE A TO IRS FORM 8038

CERTIFICATES OF PARTICIPATION, SERIES 2017A

(Denver Botanic Gardens Parking Facility)

Evidencing Proportionate Interests in the Base Rentals and other Revenues
under an Annually Renewable Lease Purchase Agreement between the Denver Botanic Gardens
Parking Facility Leasing Trust 2017A, as lessor,
and the City and County of Denver, Colorado, as lessee

- Name of 501(c)(3) Organization benefitting from Certificates of Participation:
Denver Botanic Gardens, Inc.
- Employer Identification Number:
84-0440359
- Amount of this issue benefitting organization:
\$15,506,673.00
- Amount of all other nonhospital bonds outstanding as of 02/16/17 benefitting the organization:
\$0

EXHIBIT F
CERTIFICATE OF THE TRUST

February 16, 2017

City and County of Denver, Colorado, as lessee
Becker Stowe Partners LLC
Kline Alvarado Veio, P.C.

Re: Certificates of Participation, Series 2017A (Denver Botanic Gardens Parking Facility) Evidencing a Proportionate Interest in the Base Rentals and other Revenues under a Lease Purchase Agreement No. 2017A dated the date hereof between Denver Public Facilities Leasing Trust 2017A, as lessor, and the City and County of Denver, Colorado, as lessee

Ladies and Gentlemen:

We are serving as trustee (the “Trustee”) for the Denver Botanic Gardens Parking Facility Leasing Trust 2017A (the “Trust”) created under the Declaration and Indenture of Trust (Denver Botanic Gardens Parking Facility) dated the date hereof (the “2017A Indenture”) in connection with the lease of the Leased Property under the Lease Purchase Agreement No. 2017A (Denver Botanic Gardens Parking Facility) dated the date hereof between the Trust, as lessor, and the City and County of Denver, Colorado, as lessee, and in connection with the execution and delivery of the above captioned certificates (the “Series 2017A Certificates”). All capitalized terms used and not otherwise defined herein have the same meaning as set forth in the Tax Certificate executed by the City on the date hereof (the “Tax Certificate”) to which this Certificate of the Trust is attached as Exhibit F. In connection with the execution and delivery of the 2017A Lease and the Series 2017A Certificates on the date hereof, we hereby certify, on behalf of the Trust, as follows:

1. The Trust is the lessor under the 2017A Lease.
2. The City has represented to us that substantially all of the proceeds of the 2017A Certificates are to be used to accomplish an advance refunding of the 2008B Certificates, as described in the Tax Certificate.
3. Representatives of the Trust have reviewed the Tax Certificate (including the Investment Instructions attached thereto) executed and delivered by the City, and such review is hereby acknowledged by the undersigned.
4. The Trust covenants and agrees to comply or cause compliance with any applicable covenants and requirements of the Trust created under or set forth in the Tax Certificate, including, but not limited to, the requirement to engage a tax compliance consultant in the event the City fails to do so, which may be the same tax compliance consultant as retained by the City, for purposes of rebate compliance under the Code.

The Trustee understands and acknowledges that this Certificate of the Trust will form a part of the basis for the opinion, dated the date hereof, of Becker Stowe Partners LLC, co-Special Counsel, and Kline Alvarado Veio, P.C., co-Special Counsel, to the effect that the Interest Portions of the Base Rentals payable under the 2017A Lease and with respect to the Series 2017A Certificates is excludible from the gross income of the recipients thereof for purposes of federal income taxation under existing laws, regulations, rulings and judicial decisions.

**DENVER BOTANIC GARDENS PARKING
FACILITY LEASING TRUST 2017A**

By its Trustee:
UMB BANK, n.a.

By: 
Name: Leigh M. Lutz
Title: Senior Vice President

EXHIBIT G
DBG 501(C)(3) DETERMINATION LETTER

(Attached hereto)

* * *

Internal Revenue Service

Date: January 7, 2004

Denver Botanic Garden, Inc.
909 York St.
Denver, CO 80206-3751

Department of the Treasury
P. O. Box 2508
Cincinnati, OH 45201

Person to Contact:
Tracy Garrigus #31-07307
Customer Service Representative
Toll Free Telephone Number:
8:00 a.m. to 6:30 p.m. EST
877-829-5500
Fax Number:
513-263-3756
Federal Identification Number:
84-0440359

Dear Sir or Madam:

This is in response to your request of January 7, 2004, regarding your organization's tax-exempt status.

In December 1952 we issued a determination letter that recognized your organization as exempt from federal income tax. Our records indicate that your organization is currently exempt under section 501(c)(3) of the Internal Revenue Code.

Based on information subsequently submitted, we classified your organization as one that is not a private foundation within the meaning of section 509(a) of the Code because it is an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi).

This classification was based on the assumption that your organization's operations would continue as stated in the application. If your organization's sources of support, or its character, method of operations, or purposes have changed, please let us know so we can consider the effect of the change on the exempt status and foundation status of your organization.

Your organization is required to file Form 990, Return of Organization Exempt from Income Tax, only if its gross receipts each year are normally more than \$25,000. If a return is required, it must be filed by the 15th day of the fifth month after the end of the organization's annual accounting period. The law imposes a penalty of \$20 a day, up to a maximum of \$10,000, when a return is filed late, unless there is reasonable cause for the delay.

All exempt organizations (unless specifically excluded) are liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remuneration of \$100 or more paid to each employee during a calendar year. Your organization is not liable for the tax imposed under the Federal Unemployment Tax Act (FUTA).

Organizations that are not private foundations are not subject to the excise taxes under Chapter 42 of the Code. However, these organizations are not automatically exempt from other federal excise taxes.

Donors may deduct contributions to your organization as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to your organization or for its use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

-2-

Denver Botanic Garden, Inc.
84-0440359

Your organization is not required to file federal income tax returns unless it is subject to the tax on unrelated business income under section 511 of the Code. If your organization is subject to this tax, it must file an income tax return on the Form 990-T, Exempt Organization Business Income Tax Return. In this letter, we are not determining whether any of your organization's present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

Section 6104 of the Internal Revenue Code requires you to make your organization's annual return available for public inspection without charge for three years after the due date of the return. The law also requires organizations that received recognition of exemption on July 15, 1987, or later, to make available for public inspection a copy of the exemption application, any supporting documents and the exemption letter to any individual who requests such documents in person or in writing. Organizations that received recognition of exemption before July 15, 1987, and had a copy of their exemption application on July 15, 1987, are also required to make available for public inspection a copy of the exemption application, any supporting documents and the exemption letter to any individual who requests such documents in person or in writing. For additional information on disclosure requirements, please refer to Internal Revenue Bulletin 1999 - 17.

Because this letter could help resolve any questions about your organization's exempt status and foundation status, you should keep it with the organization's permanent records.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

This letter affirms your organization's exempt status.

Sincerely,

Donna Carlisle

Donna Carlisle, Acting Director, TE/GE
Customer Account Services

EXHIBIT H-1
PUBLIC APPROVAL CERTIFICATE

CERTIFICATES OF PARTICIPATION, SERIES 2017A
(Refunding of Certificates of Participation, Series 2008B,
Denver Botanic Gardens Parking Facility Project)
Evidencing Proportionate Interests in the Base Rentals and other Revenues
Under an Annually Renewable Lease Purchase Agreement No. 2017A between the
Denver Botanic Gardens Parking Facility Leasing Trust 2017A, as lessor,
And the City and County of Denver, as lessee

**CERTIFICATE OF APPROVAL
OF THE ISSUANCE OF OBLIGATIONS
BY THE CITY AND COUNTY OF DENVER, COLORADO**

Section 1. The undersigned is the Mayor of the City and County of Denver, Colorado (the "City"), and is the elected chief executive office of the City.

Section 2. The City plans to issue obligations in an aggregate face amount not to exceed \$17,600,000 (the "Obligations") to advance refund the Series 2008B Certificates of Participation, from which proceeds were used for (i) the design, construction, installation and equipping and related expenditures for the parking facility (the "Facility") located directly west of 1005 York Street, Denver, Colorado 80206 between York Street and Josephine Street, to serve the City's Denver Botanic Gardens operated by the Denver Botanic Gardens, Inc., a Colorado nonprofit corporation, (ii) a debt service reserve fund, and (iii) certain costs relating to the Certificates. The Facility will continue to be owned by the renamed Denver Botanic Gardens Parking Facility Leasing Trust 2017A, a Colorado trust (the "Trust"). The Trust will continue to lease the Facility to the City pursuant to the Lease. The Facility will continue to be operated and maintained by the Denver Botanic Gardens, Inc.

Section 3. On January 17, 2017, a notice of public hearing was published in The Daily Journal, a newspaper of general circulation available to residents of the City, to inform residents of the City of the time and place of a hearing to be held on February 1, 2017, to consider the approval of the issuance of the Obligations. A copy of the report regarding such public hearing and an affidavit of publication of such notice is attached to this Certificate.

Section 4. The notice was designed to apprise residents of the City of the proposed issuance of the Obligations and was published not less than 14 days before the scheduled date of the public hearing.

Section 5. On February 1, 2017, a public hearing was held at the office of the Manager of Finance of the City and County of Denver, Colorado, 201 West Colfax, Room 10.H.11, Denver, Colorado at 10:30 a.m.

Section 6. At the public hearing, a reasonable opportunity was afforded to all interested persons to express their views, both orally and in writing, on the issuance of the Obligations. No written or oral objection was heard at such hearing to the issuance of the Obligations.

Section 7. By this Certificate, the undersigned hereby approves the issuance of the Obligations and the use of the proceeds to provide for the refunding of the Certificates of Participation, Series 2008B.

IN WITNESS WHEREOF, the undersigned has set his hand as of February 8, 2017.

CITY AND COUNTY OF DENVER, COLORADO

By  _____
Mayor

REPORT ON PUBLIC HEARING

MEMORANDUM

February 8, 2017

TO: The Honorable Michael B. Hancock, Mayor City and County of Denver
THROUGH: Brendan J. Hanlon, Manager of Finance, City and County of Denver
FROM: Beth Strauss, Senior Capital Funding Analyst, City and County of Denver
SUBJECT: Summary of TEFRA Public Hearing on February 1, 2017

In accordance with regulations associated with the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), a public hearing was held for the proposed execution and delivery by the City of an Annually Renewable Lease Purchase Agreement No. 2017A Between the Denver Botanic Gardens Parking Facility Leasing Trust 2017A, as Lessor, and the City and County of Denver, as Lessee. The purpose of this memorandum is to provide a summary of the TEFRA Public Hearing held on February 1, 2017, at 10:30 a.m. Mountain Time, conducted at the Wellington E. Webb Municipal Office Building. This summary report is to serve as a component of the *Certificate of Approval of the Issuance of the Certificates of Participation Series 2017A (Denver Botanic Gardens Parking Facility Project) by the Trustee to benefit the City and County of Denver, Colorado.*

Pursuant to the published notice, at 10:30 a.m. on January 17, 2017 in the Webb 10.H.11 Conference room on the Tenth Floor, I was in attendance. No other individuals were present, nor were any written comments received prior to or during the public hearing. After waiting until 10:45 a.m., I announced the opening of the TEFRA Public Hearing and asked for any public comment.

No comments were offered and shortly thereafter, I announced the public hearing closed.

EXHIBIT H-2
AFFIDAVIT OF PUBLICATION OF TEFRA HEARING



AFFIDAVIT

Invoice #: A40006425
Account #: A40000201
Invoice Date: 1/17/2017
Inquiries to: Tel: 866-260-9240
Fax: 855-323-9871

BILL TO:

CITY & CTY OF DENVER; DEPT OF FINANCE
BETH STRAUSS - SR. CAPITAL FUNDING
201 W. COLFAX AVE. DEPT. 1010
DENVER, CO 80202

ADVERTISER:

PUBLICATION: Denver Daily Journal Legal

STATE OF COLORADO
COUNTY OF DENVER

I, DOROTHY MONTANTI, OF THE COUNTY OF MERCER, STATE OF NEW JERSEY, HAVING DULY BEEN SWORN, DEPOSES AND SAYS:
I AM NOW AND AT ALL TIMES HERINAFTER MENTIONED A CITIZEN OF THE UNITED STATES OF AMERICA, OVER TWENTY-ONE YEARS OF AGE, AND COMPETENT TO BE A WITNESS ON THE HEARING OF THE MATTERS MENTIONED IN THE ANNEXED PRINTED COPY NOTICE HERINAFTER SET FORTH; I HAVE NO INTEREST WHATSOEVER IN ANY OF THE SAID MATERS; I AM NOW AND DURING ALL TIIMES EMBRACED IN THE PUBLICATION HERIN MENTIONED AS THE CHIEF CLERK OF THE NEWSPAPER, A NEWSPAPER OF GENERAL CIRCULATION PRINTED AND PUBLISHED IN SAID COUNTY; AS CHIEF CLERK DURING ALL TIMES METNTIONED IN THE AFFIDAVIT I HAVE HAD AND STILL HAVE CHARGE OF ALL ADVERTISEMENT AND NOTICES PUBLISHED IN SAID NEWSPAPER; THAT SAID LEGAL NOTICE OF WHICH THE ANNEXED IS A TRUE PRODUCTION COPY OF THE PRINTED PAGE IN WHICH THE ADVERTISEMENT WAS PUBLISHED IN THE ABOVE NAMED NEWSPAPER ON THE FOLLOWING DAYS TO WIT:

1/17/17; NOTICE OF PUBLIC HEARING; WEDNESDAY, FEBRUARY 1, 2017

I CERTIFY (OR DECLARE) UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

SIGNED,

CHIEF CLERK

PUBLIC NOTICES

806
NOTICE OF FINAL SETTLEMENT
 CITY OF AURORA, COLORADO
 DATE: January 17, 2017
 PURCHASE ORDER NO. 16P0651K
 PROJECT NO: 18002
 PROJECT TITLE:
 2016 Surface Treatment Program
 CONTRACTOR:
 A-1 Chipseal Company
 2505 E 74th Avenue
 Denver, CO 80229
 Notice is hereby given that the City of Aurora intends to start processing the Final Payment to the above-named Contractor on **January 28th, 2017**, provided no claims are received. Any person or firm having debts against the Contractor must file a proper written notice with the Contract Coordinator, City of Aurora, Purchasing and Contract Services Division, 15151 East Alameda Parkway Suite 3500, Aurora, Colorado 80012, on or before the above date.
CITY OF AURORA, COLORADO
 BY: Willie Brown
 Senior Procurement Agent
 Published: January 17 & 18, 2017
 In The Daily Journal

807
NOTICE OF FINAL SETTLEMENT
 CITY OF AURORA, COLORADO
 DATE: January 17th, 2017
 PURCHASE ORDER NO. 15P1106K
 PROJECT NO: 15006
 PROJECT TITLE:
 2015 Concrete Infrastructure Program
 CONTRACTOR:
 Fasiok Concrete Inc.
 5835 W 6th Avenue #2PA
 Lakewood, CO 80214
 Notice is hereby given that the City of Aurora intends to start processing the Final Payment to the above-named Contractor on **January 28th, 2017**, provided no claims are received. Any person or firm having debts against the Contractor must file a proper written notice with the Contract Coordinator, City of Aurora, Purchasing and Contract Services Division, 15151 East Alameda Parkway Suite 3500, Aurora, Colorado 80012, on or before the above date.
CITY OF AURORA, COLORADO
 BY: Michelle Ratoliff
 Senior Procurement Agent
 Published: January 17 & 18, 2017
 In The Daily Journal

822
NOTICE
 You are hereby notified that pursuant to the Denver Revised Municipal Code, **Lost Creek Ventures, Inc.** doing business as **Bonnie Cannabis Company**, has by application of **October 26, 2016**, requested the Licensing Authority of the City and County of Denver to grant a transfer of location for a **Retail Marijuana Store to sell Marijuana at 4837 N. Washington St. Unit 100**. You are further notified that on **February 15, 2017**, at the hour of **9:00 a.m.** a hearing on such application will be held in Dept. 206 in the Wellington Webb Building, 201 W. Colfax Ave, Denver, Colorado. Information may be obtained and questions directed to the Office of the Director of Excise and Licenses relating to this application. Remonstrances may be filed with the Director of Excise and Licenses, 801 West Colfax Ave., Dept. 206, Denver, Colorado 80202. Also, any party in interest desiring a night hearing must make application for such at least fifteen (15) days prior to the date of hearing mentioned above.
DIRECTOR OF EXCISE AND LICENSES
 Published: January 17, 2017
 In The Daily Journal

839
NOTICE OF FINAL PAYMENT
 Notice is hereby given that at 5:00 p.m., Local Time, on the 27th day of January, 2017, the City and County of Denver, Denver, Colorado will make final settlement with Haloyon Construction, Construction Contractor for all materials furnished and for all labor performed under a contract with said City and County of Denver, dated 21st day of May, 2015, for the On-Call Construction (OC201520801), for Contract No. 201525458 - Canopy Removal Project.
 File claims with the Manager, Department of Public Works, 201 West Colfax Avenue, Department 608, Denver, Colorado 80202, on or before 5:00 p.m., Local Time, on the 27th day of January, 2017, pursuant to C.R.S. 1973, Title 38-26-107.
 Jose M. Cornejo, P.E.
 Manager of Public Works
 Published: January 17 & 18, 2017
 In The Daily Journal

840
NOTICE OF FINAL PAYMENT
 Notice is hereby given that at 5:00 p.m., Local Time, on the 27th day of January, 2017, the City and County of Denver, Denver, Colorado will make final settlement with Haloyon Construction, Construction Contractor for all materials furnished and for all labor performed under a contract with said City and County of Denver, dated 21st day of May, 2015, for the On-Call Construction (OC201520801), for Contract No. 201630331 - DFD HVAC Renovation.
 File claims with the Manager, Department of Public Works, 201 West Colfax Avenue, Department 608, Denver, Colorado 80202, on or before 5:00 p.m., Local Time, on the 27th day of January, 2017, pursuant to C.R.S. 1973, Title 38-26-107.
 Jose M. Cornejo, P.E.
 Manager of Public Works
 Published: January 17 & 18, 2017
 In The Daily Journal

841
NOTICE
 You are hereby notified that pursuant to the Colorado Liquor and Beer Codes, and the Denver Revised Municipal Code, **Tupelo Honey Hospitality Corporation; Stephen Frabitors, CEO/Director; Damon Dessantis, Director** doing business as **Tupelo Honey Cafe**, has by application of **December 18, 2016**, requested the Licensing Authority of the City and County of Denver to grant **a hotel and restaurant liquor license to dispense Malt, Wine and Spirituous Liquor by the drink for consumption ON the premises at this location 1650 Wewatta Suite 104**. You are further notified that on **February 3, 2017**, at the hour of **1:30 p.m.** a hearing on such application will be held at 201 West Colfax Ave., Dept. 206, Denver, Colorado 80202. Information may be obtained and questions directed to the Office of the Director of Excise and Licenses relating to this application and the area through which petitions may be circulated. Petitions and remonstrances may be filed with the Director of Excise and Licenses, 801 West Colfax Ave., Dept. 206, Denver, Colorado 80202. Any party in interest desiring a night hearing must make application for such at least fifteen (15) days prior to the date of hearing mentioned above.
DIRECTOR OF EXCISE AND LICENSES
 Published: January 17, 2017
 In The Daily Journal

845
NOTICE OF PUBLIC HEARING
CONCERNING THE EXECUTION AND DELIVERY OF CERTIFICATES OF PARTICIPATION, SERIES 8017A (REFUNDING OF CERTIFICATES OF PARTICIPATION, SERIES 2008B, DENVER BOTANIC GARDENS PARKING FACILITY PROJECT) EVIDENCING PROPORTIONATE INTERESTS IN THE BASE RENTALS AND OTHER REVENUES UNDER AN ANNUALLY RENEWABLE LEASE PURCHASE AGREEMENT NO. 2017A BETWEEN THE DENVER BOTANIC GARDENS PARKING FACILITY LEASING TRUST 2017A, AS LESSOR, AND THE CITY AND COUNTY OF DENVER, COLORADO, AS LESSEE

PUBLIC NOTICE IS HEREBY GIVEN that a public hearing will be held on Wednesday, February 1, 2017, commencing at 10:30 a.m., at the offices of the Manager of Finance of the City and County of Denver, Colorado (the "City"), 201 West Colfax, Room 10.H.11, Denver, Colorado, for the purpose of providing a reasonable opportunity for interested individuals to express their views, orally or in writing, on the execution and delivery by the City of the above-referenced amended and restated lease purchase agreement (the "2017A Lease") and the nature of the project described below which will be financed from the proceeds of the sale of certificates of participation (the "Certificates") evidencing proportionate interests in the base rentals and other revenues under the 2017A Lease in the aggregate principal amount not to exceed \$17,800,000. The net proceeds of the Certificates are to be used to advance refund the Series 2008B Certificates of Participation, from which proceeds were used for (i) the design, construction, installation and equipping and related expenditures for the parking facility (the "Facility") located directly west of 1005 York Street, Denver, Colorado 80208 between York Street and Josephine Street, to serve the City's Denver Botanic Gardens operated by the Denver Botanic Gardens, Inc., a Colorado nonprofit corporation, (ii) a debt service reserve fund, and (iii) certain costs relating to the Certificates. The Facility will continue to be owned by the renamed Denver Botanic Gardens Parking Facility Leasing Trust 2017A, a Colorado trust (the "Trust"). The Trust will continue to lease the Facility to the City pursuant to the Lease. The Facility will continue to be operated and maintained by the Denver Botanic Gardens, Inc.

Interested members of the public are invited to attend the public hearing. Persons desiring to obtain additional information concerning the 2017A Lease, the Certificates or the Project in advance of the hearing should contact the City at the address shown below.

CITY AND COUNTY OF DENVER, COLORADO
 201 West Colfax, Dept. 1010
 Denver, Colorado 80202
 By: Manager of Finance
 Published: January 17, 2017 in The Daily Journal

842
NOTICE OF FINAL SETTLEMENT
 Notice is hereby given that at 11 a.m., local time, January 31, 2017, the City and County of Denver, Colorado will make final settlement with Trautman & Shreve, Inc., for all materials furnished and for all labor performed under a contract with said City and County of Denver for Contract No. 201418277, Concourse B PCA Replacement, at Denver International Airport, Denver, Colorado.
 File claims with the Manager, Department of Aviation, Denver International Airport, Airport Office Building, 8500 Peña Boulevard, Denver, Colorado 80249-6340, on or before 11 a.m., local time, January 31, 2017, according to Title 38, Article 28, Section 107, C.R.S. (2014).
 Published: January 17 & 18, 2017
 In The Daily Journal

843
NOTICE OF FINAL SETTLEMENT
 Notice is hereby given that at 11 a.m., local time, January 31, 2017, the City and County of Denver, Colorado will make final settlement with Roche Constructors, Inc., for all materials furnished and for all labor performed under a contract with said City and County of Denver for Contract No. 201207654 On-Call Construction Services, Task Order No. 009 - Mt. Elbert Bus Shelter Replacements, at Denver International Airport, Denver, Colorado.
 File claims with the Manager, Department of Aviation, Denver International Airport, Airport Office Building, 8500 Peña Boulevard, Denver, Colorado 80249-6340, on or before 11 a.m., local time, January 31, 2017, according to Title 38, Article 28, Section 107, C.R.S. (2014).
 Published: January 17 & 18, 2017
 In The Daily Journal

844
NOTICE OF FINAL SETTLEMENT
 Notice is hereby given that at 11 a.m., local time, January 31, 2017, the City and County of Denver, Colorado will make final settlement with Interstate Highway Construction, Inc., for all materials furnished and for all labor performed under a contract with said City and County of Denver for Contract No. 201624638, Taxiway EC Pavement Rehabilitation, at Denver International Airport, Denver, Colorado.
 File claims with the Manager, Department of Aviation, Denver International Airport, Airport Office Building, 8500 Peña Boulevard, Denver, Colorado 80249-6340, on or before 11 a.m., local time, January 31, 2017, according to Title 38, Article 28, Section 107, C.R.S. (2014).
 Published: January 17 & 18, 2017
 In The Daily Journal

FOR LEGAL NOTICES IN THE DAILY JOURNAL
 Call us at 877- 260-3621 ■ daily.journal@construction.com

FOR LEGAL NOTICES
 daily.journal@construction.com

THE DAILY JOURNAL

REACH THE RIGHT PEOPLE AT THE RIGHT TIME.

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 888-814-0513

DODGE
 DATA & ANALYTICS

Attachment 2**Denver Botanic Gardens, Inc.
A Colorado Nonprofit Corporation**Procedures for ongoing compliance with Sections 141 and 148 of the Internal Revenue Code

The following procedures apply to any tax-exempt obligations (“Obligations”) issued or entered into and executed by the City and County of Denver, Colorado or another issuer (the “Issuer”) for the benefit of Denver Botanic Gardens, Inc. (the “Corporation”). These procedures and the tax certificate and Form 8038 filed for each issue of Obligations issued for the benefit of the Corporation will be reviewed by the President or another officer or employee of the Corporation designated by the President in writing (the “Compliance Officer”) (i) on or prior to each five-year anniversary date of the issue date of the Obligations; (ii) on or within thirty (30) days of the date the Obligations are retired, defeased or refunded; (iii) on or prior to the date of any rebate payment is made if that date is not within sixty (60) days of one of the dates mentioned in (i) or the date the Obligations are retired, defeased or refunded; (iv) at the time of any change in use of any asset that was funded with a material amount of proceeds of Obligations; and (v) at the time of the occurrence or non-occurrence of any other event that could affect the tax status of the Obligations as indicated in the tax certificate (e.g., the occurrence of an event which the tax certificate represents will not occur or is not expected to occur, or the non-occurrence of an event the tax certificate represents will or is expected to occur). In addition, the Compliance Officer will conduct annual compliance checks of the current status of the proceeds of each issue of tax-exempt Obligations and the current use of the facilities financed by tax-exempt Obligations. These reviews will be made for the purposes of identifying any possible violation of federal tax requirements and to ensure the timely correction of those violations with remedial action described in the regulations of the United States Department of the Treasury or through the Tax-Exempt Bonds Voluntary Closing Agreement Program. If a possible violation is identified, the Compliance Officer will consult with bond counsel as to the appropriate steps to take.

In addition, it is the Corporation’s policy to cooperate with the Issuer or retain rebate consultants to assist in monitoring the compliance of Obligations issued for its benefit in respect of the rebate and yield restriction requirements of Section 148 of the Internal Revenue Code in appropriate circumstances (e.g., where investments are made during a temporary period at a yield in excess of the yield of Obligations, and if any the investments above such yield extend beyond the temporary period). If any event of non-compliance is discovered by the Compliance Officer, the Issuer, the rebate consultants, or otherwise, the Compliance Officer will consult with bond counsel as to the appropriate action to take to remedy the non-compliance, including payment of late payment interest and penalties on rebate and yield reduction payments and through use of the Tax-Exempt Bond Voluntary Closing Agreement Program.

As part of the training of any successor, the President and Compliance Officer will review the requirements of these procedures, the tax certificate and Form 8038 for each issue of tax-exempt Obligations with the successor as part of the successor’s transition into office. Any successor President will be encouraged to adopt these procedures as his or her own.

The Corporation will retain all records relating to tax-exempt Obligations and compliance with the requirements of the Internal Revenue Code until at least three years after the last maturity of an issue (or any later issue that refinances the issue) is paid and discharged.

Established 07/11/17

By _____
Controller