

1 **BY AUTHORITY**

2 ORDINANCE NO. _____
3 SERIES OF 2017

COUNCIL BILL NO. CB 17-0042
COMMITTEE OF REFERENCE:
4 Finance & Governance Committee

5 **A BILL**

6 **For an ordinance authorizing the exercise of a purchase option under Lease**
7 **Purchase Agreement No. 2008B (Denver Botanic Gardens Parking Facility Project) and in**
8 **connection therewith the approval and execution of a Site Lease No. 2017A (Denver Botanic**
9 **Gardens Parking Facility) between the City and County of Denver, as lessor, and the Denver**
10 **Botanic Gardens Parking Facility Leasing Trust 2017A, as lessee, for certain real property**
11 **consisting of the parking facility site at the Denver Botanic Gardens, an annually renewable**
12 **Lease Purchase Agreement No. 2017A (Denver Botanic Gardens Parking Facility) between**
13 **the Denver Botanic Gardens Parking Facility Leasing Trust 2017A, as lessor, and the City**
14 **and County of Denver, as lessee, a License and Access Agreement No. 2017A between the**
15 **Denver Botanic Gardens Parking Facility Trust 2017A, as licensor, and the City and County**
16 **of Denver, as licensee, and the execution of other documents related thereto; authorizing**
17 **officials of the City and County of Denver to take all action necessary to carry out the**
18 **transactions contemplated hereby; ratifying action previously taken and providing other**
19 **matters relating thereto.**

20 WHEREAS, the City and County of Denver, Colorado (the "City"), is a municipal corporation
21 duly organized and existing as a home-rule city under Article XX of the Colorado Constitution and
22 under the Charter of the City (references to provisions therein being to the 1960 Compilation, as
23 amended), and is a political subdivision of the State of Colorado (the "State"); and

24 WHEREAS, subject to certain exceptions, all legislative powers possessed by the City,
25 conferred by Article XX of the State Constitution, or contained in the Charter, as either has from
26 time to time been amended, or otherwise existing by operation of law, are vested in the City
27 Council of the City (the "Council"); and

28 WHEREAS, the City is authorized, pursuant to Article XX of the State Constitution and the
29 Charter and its plenary grant of powers as a home rule city, to enter into lease purchase
30 agreements in order to lease and acquire land, buildings, equipment and other property for
31 governmental purposes and to purchase, receive, hold and enjoy or sell and dispose of, as lessor
32 or as lessee, real and personal property; and

33 WHEREAS, the City owns a certain site located directly west of 1005 York Street between
34 York Street and Josephine Street (the "Parking Facility Site") and a certain site located directly
35 north of the Parking Facility Site (the "License Site"); and

36 WHEREAS, the City, as lessor, has heretofore entered into Site Lease No. 2008B (Denver
37 Botanic Gardens Parking Facility Project) dated as of November 12, 2008, between Denver

1 Botanic Gardens Parking Facility Leasing Trust 2008, a Colorado trust (the “2008 Trust”), as
2 lessee, on file in Clerk’s Filing No. 08-9111-A (the “2008B Site Lease”), under which the City
3 leased the Parking Facility Site to the 2008 Trust; and

4 WHEREAS, the City has determined to amend and restate the 2008B Site Lease as the
5 2017A Site Lease (as defined below); and

6 WHEREAS, the City, as lessee, has heretofore entered into Lease Purchase Agreement
7 No. 2008B (Denver Botanic Gardens Parking Facility Project) dated as of November 12, 2008 (the
8 “2008B Lease”), between the 2008 Trust, as lessor, and the City, as lessee, on file in Clerk’s Filing
9 No. 08-911 under which (i) the 2008 Trust agreed to construct on the Parking Facility Site a
10 parking facility (the “Parking Facility”), and (ii) the City, as lessee, agreed to lease the Parking
11 Facility from the 2008 Trust, as lessor; and

12 WHEREAS, the City was granted an option to purchase the Parking Facility Site and
13 Parking Facility (together, the “Leased Property”) pursuant to the terms and conditions stated in
14 the 2008B Lease (the “2008B Lease Purchase Option”); and

15 WHEREAS, pursuant to that certain Declaration and Indenture of Trust dated as of
16 November 12, 2008 (the “2008B Indenture”), between UMB Bank, n.a., Denver, Colorado, as
17 trustee (the “2008B Trustee”), on file in Clerk’s Filing No. 08-911-B, the 2008B Trustee

- 18 1) created the 2008 Trust; and
- 19 2) executed and delivered the Certificates of Participation, Series 2008B in the
20 aggregate principal amount of \$17,735,000 (the “2008B Certificates”) evidencing
21 proportionate interests in the 2008 Trust’s rights to receive certain revenues,
22 including Base Rentals, under the 2008B Lease; and

23 WHEREAS, the City entered into a License and Access Agreement dated as of November
24 12, 2008 (the “2008 License and Access Agreement”) between the 2008 Trust and the City, on file
25 in Clerk’s Filing No. 08-911-D granting a license across, over, under and on the License Site to the
26 2008 Trust; and; and

27 WHEREAS, (1) UMB Bank, n.a. is referred herein as the “Trustee” in its capacity as Trustee
28 of the Trust (as hereinafter defined) and in respect of the 2017A Certificates (as hereinafter
29 defined) and (2) pursuant to the 2017A Indenture (as hereinafter defined), the name of the 2008B
30 Trust is to be changed to the “Denver Botanic Gardens Parking Facility Leasing Trust 2017A” and
31 is referred to herein as the “Trust”; and

32 WHEREAS, (1) it is economically advantageous at this time to effect a refunding of the
33 transaction in respect of the 2008B Lease, the 2008B Indenture and the 2008B Certificates by

1 providing for the restructuring of the Base Rentals due under the 2008B Lease in order to
2 accomplish such refunding transaction, and (2) it is necessary that the 2008B Lease, the 2008B
3 Site Lease and the License and Access Agreement be amended and restated; and

4 WHEREAS, a response to a request for proposal for the purchase of the 2017A Certificates
5 on terms acceptable to the City has been received by UMB Bank, n.a. and the City has determined
6 to accept such proposal; and

7 WHEREAS, there have been filed on January 26, 2017, in the office of the Clerk the
8 substantially final forms of the following:

9 (1) Site Lease No. 2017A (Denver Botanic Gardens Parking Facility) to be dated
10 its date of execution and delivery (the "2017A Site Lease"), in Clerk's Filing No.
11 2008-0911-E, between the City, as lessor, and the Trust, as lessee, which amends and
12 restates in its entirety the 2008B Site Lease; and

13 (2) Lease Purchase Agreement No. 2017A (Denver Botanic Gardens Parking
14 Facility) including Exhibits A through D thereto to be dated its date of execution and delivery
15 (the "2017A Lease"), in Clerk's Filing No. 2008-0911-F, between the Trust, as lessor, and
16 the City, as lessee, which amends and restates in its entirety the 2008B Lease; and

17 (3) Declaration and Indenture of Trust (Denver Botanic Garden Parking Facility) to
18 be dated its date of execution and delivery (the "2017A Indenture"), in Clerk's Filing No.
19 2008-0911-G, entered into by UMB Bank, n.a., Denver, Colorado, as trustee (the "Trustee"),
20 which amends and restates in its entirety the 2008B Indenture, under which Certificates of
21 Participation, Series 2017A (Denver Botanic Gardens Parking Facility) (the "2017A
22 Certificates"), in the aggregate maximum principal amount of \$17,600,000 evidencing
23 proportionate interests in the Trust's rights to receive certain revenues, including Base
24 Rentals, under the 2017A Lease, are to be executed and delivered by the Trustee; and

25 (4) License and Access Agreement to be dated its date of execution and deliver
26 (the "2017A License and Access Agreement"), in Clerk's Filing No. 2008-0911-H, entered
27 into between the Trust and the City, which amends the 2008 License and Access
28 Agreement; and

29 WHEREAS, the City has determined that it is convenient and in the best interests of the City
30 that the City (a) exercise its 2008B Lease Purchase Option, (b) enter into the 2017A Site Lease,
31 the 2017A Lease, the 2017A Indenture and the 2017A License and Access Agreement in order to
32 effect the refunding transaction and continue to lease the Leased Property from the Trust for use

1 by the City and (c) accept the proposal from UMB Bank, n.a. for the purchase of the 2017A
2 Certificates; and

3 WHEREAS, the 2017A Certificates are to be sold pursuant to the 2017A Indenture.

4 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

5 **Section 1. Ratification of Actions.** All action heretofore taken, not inconsistent with the
6 provisions of this ordinance, by the City or its officers, directed toward the exercise of the City's
7 2008B Lease Purchase Option and, in order to effect the refunding transaction, the continuation of
8 the leasing by the Trust from the City pursuant to the 2017A Site Lease and by the City from the
9 Trust of the Leased Property pursuant to the 2017A Lease, and the private placement sale of the
10 2017A Certificates to UMB Bank, n.a., is hereby ratified, approved and confirmed.

11 **Section 2. Findings; Authorizations.** This ordinance is adopted pursuant to the City's
12 powers as a home rule city organized and operating under the Charter and Article XX of the State
13 Constitution; and the City hereby determines that each and every matter and thing as to which
14 provision is made herein is necessary in order to carry out and to effect the purposes hereof.

15 The Council hereby finds and determines, pursuant to the City's home rule powers, that the
16 following actions are necessary, convenient and in furtherance of the governmental purposes of
17 the City and are in the best interests of the City and its residents:

- 18 (1) the leasing of the Facilities to the Trust pursuant to the 2017A Site Lease;
- 19 (2) the exercise of the 2008B Lease Purchase Option; and
- 20 (3) effecting the refunding transaction and continuing the leasing of the Leased
21 Property pursuant to the terms and provisions of the 2017A Site Lease, 2017A Lease and
22 the 2017A License and Access Agreement.

23 The Council hereby authorizes (1) the exercise of the 2008B Lease Purchase Option and
24 (2) the leasing of the Leased Property from the Trust under and pursuant to the terms and
25 provisions of the 2017A Lease.

26 **Section 3. Approvals; Execution of Documents; Authorized Officers.** The 2017A
27 Site Lease, the 2017A Lease and the 2017A License and Access Agreement are in substantially
28 the forms as filed in Clerk's Filing No. 2008-0911-E, Clerk's Filing No. 2008-0911-F, Clerk's Filing
29 No. 2008-0911-H are in all respects approved. The Mayor is hereby authorized and directed to
30 execute and deliver, and the Clerk is hereby authorized and directed to affix the seal of the City to,
31 and attest, the 2017A Site Lease, the 2017A Lease, and the 2017A License and Access
32 Agreement in substantially the forms as filed with the Clerk in Clerk's Filing No. 2008-0911-E,
33 Clerk's Filing No. 2008-0911-F, Clerk's Filing No. 2008-0911-H.

1 **Section 4. No General Obligation or Other Indebtedness.** The obligation of the City to
2 make rental payments under the 2017A Lease is subject to annual appropriation by the Council
3 and constitutes an undertaking of the City to make current expenditures. No provision of this
4 ordinance, the 2017A Site Lease, the 2017A Lease, the 2017A Indenture, the 2017A License and
5 Access Agreement or the Series 2017A Certificates shall be construed as constituting or giving rise
6 to a general obligation or other indebtedness or a multiple fiscal year direct or indirect debt or other
7 financial obligation of the City within the meaning of any home rule, constitutional or statutory debt
8 limitation nor a mandatory charge or requirement against the City in any ensuing fiscal year
9 beyond the current fiscal year. On an annual basis the City may choose to not renew, and thereby
10 terminate its obligations under, the 2017A Lease.

11 **Section 5. Reasonable Rentals.** The Council hereby determines and declares that the
12 Base Rentals due under the 2017A Lease do not exceed a reasonable amount so as to place the
13 City under an economic compulsion to renew and therefore not to terminate the 2017A Lease or to
14 exercise its option to purchase the leasehold interest of the Trust in the Facility, pursuant to the
15 2017A Lease.

16 **Section 6. Consent to Sale of 2017A Certificates.** The Council hereby acknowledges
17 and consents to (1) the 2017A Indenture and (2) the execution and delivery by the Trustee of, the
18 form of, and private placement sale of the 2017A Certificates, all pursuant to the 2017A Indenture,
19 in substantially the form of the 2017A Indenture filed with the Clerk in Clerk's Filing No. 2008-0911-
20 G.

21 **Section 7. Additional Documents; Delegated Powers.** The Clerk is hereby authorized
22 and directed to attest all signatures and acts of any official of the City in connection with the
23 matters authorized by this ordinance. Within a reasonable time following the effective date of this
24 Ordinance, the Mayor, the Auditor, the Clerk, the Chief Financial Officer and other officials and
25 employees of the City are hereby authorized to execute and deliver for and on behalf of the City
26 any and all additional certificates, documents and other papers and to perform all other acts that
27 they may deem necessary or appropriate in order to implement and carry out the transactions and
28 other matters authorized by this ordinance. Such necessary or appropriate actions include, without
29 limitation,

30 (1) the execution and delivery by the Chief Financial Officer of a supplement to
31 the Base Rentals Schedule (Exhibit C) of the 2017A Lease prior to the recording of the
32 2017A Lease in the real estate records, such supplement to evidence the actual Base
33 Rentals due under Lease Purchase Agreement No. 2017A (Denver Botanic Gardens

1 Parking Facility), within the limitations set forth on the Base Rentals Schedule in the form of
2 the 2017A Lease filed with the Clerk in Clerk's Filing No. 2008-0911-F, and

3 (2) the determination by the Chief Financial Officer of the dated date (which shall
4 be the delivery date) of the 2017A Site Lease and the 2017A Lease, and

5 (3) the execution and delivery of such certificates and opinions as may be
6 reasonably required by the City's counsel, the Trustee or the underwriter selected for the
7 private placement sale of the 2017A Certificates or relating to, among other things, the
8 tenure and identity of the officials of the City and the Council, the absence of pending
9 litigation affecting the validity of the 2017 Site Lease, the 2017A Lease, federal and state
10 securities laws, and expectations and covenants relating to the excludability from gross
11 income for federal income tax purposes of the portion of Base Rentals under and as defined
12 in the 2017A Lease designated in the 2017A Lease and paid as interest under the 2017A
13 Lease, all as contemplated by this ordinance and are not inconsistent with this ordinance.

14 **Section 8. Severability.** If any section, paragraph, clause or provision of this ordinance
15 shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such
16 section, paragraph, clause or provision shall not affect any of the remaining provisions of this
17 ordinance.

18 **Section 9. Effective Date.** This ordinance shall take effect as provided in the Charter of
19 the City.

20 **Section 10. Publications.** The bill for this ordinance and this ordinance are hereby
21 authorized and directed to be published as required by the Charter.

22 **Section 11. Recordation and Authentication.** The ordinance shall be recorded after its
23 passage in the ordinance record of the City, kept for that purpose, and authenticated by the
24 signature of the Mayor and attested and countersigned by the Clerk.
25

26 **[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**
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1 COMMITTEE APPROVAL DATE: January 24, 2017

2 MAYOR-COUNCIL DATE: N/A

3 PASSED BY THE COUNCIL: _____

4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____

6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER

9 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____; _____

10 PREPARED BY: BECKER STOWE PARTNERS LLC and
11 KLINE ALVARADO VEIO, PC;

DATE: January 26, 2017

12
13 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
14 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
15 ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to
16 § 3.2.6 of the Charter.

17
18 Kristin M. Bronson, Denver City Attorney

19
20 BY: _____, Assistant City Attorney DATE: _____