

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2012

COUNCIL BILL NO. _____
COMMITTEE OF REFERENCE:
FINANCE

A BILL

For an ordinance concerning the sale of certain City owned property, the approval of an annually renewable Lease Purchase Agreement No. 2012C (Denver Properties) between the Denver Properties Leasing Trust 2012C, as lessor, and the City and County of Denver, as lessee, for such properties; authorizing the execution of such documents and other agreements; authorizing officials of the City and County of Denver to take all action necessary to carry out the transactions contemplated hereby; ratifying action previously taken; making an appropriation for the Base Rentals due in 2012 under Lease Purchase Agreement No. 2012C; and other matters relating thereto.

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

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

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

WHEREAS, the City owns (1) certain land, buildings and improvements generally described as Denver District 1, District 2 and District 3 Police Stations, the Arie P. Taylor Building and District 5

1 Police Station, Denver Fire Station #9 and the City office building at 200 W. 14th Avenue, such land,
2 buildings and improvements collectively referred to herein as the “Denver Properties”; and

3 WHEREAS, pursuant to the 2012C Indenture, as hereinafter defined, a Trust (the “Trust”) is to
4 be created which is to be denominated as the “Denver Properties Leasing Trust 2012C”; and

5 WHEREAS, there have been filed on April __, 2012, in the office of the City Clerk for the City
6 and County of Denver (the “Clerk”) the substantially final forms of the following:

7 (1) Quitclaim Deed to be dated its date of execution and delivery (the “Quitclaim
8 Deed”), from the City to the Trust conveying the Denver Properties from the City to the Trust, in
9 Clerk’s Filing No. _____-A; and

10 (2) Lease Purchase Agreement No. 2012C (Denver Multiple Properties), including
11 Exhibits thereto, to be dated its date of execution and delivery (the “2012C Lease”), in Clerk’s
12 Filing No. _____, between the Trust, as lessor, and the City, as lessee; and

13 (3) Declaration and Indenture of Trust (Denver Properties Leasing Trust 2012C),
14 including Exhibits thereto, to be dated its date of execution and delivery (the “2012C Indenture”),
15 in Clerk’s Filing No. _____-B, entered into by Zions First National Bank, Denver,
16 Colorado, as trustee (the “Trustee”), pursuant to which the Trust will be created and under
17 which Certificates of Participation, Series 2012C-1, Series C-2 and Series C-3, in the aggregate
18 maximum principal amount of \$[45,000,000] (the “2012C Certificates”) evidencing proportionate
19 interests in the Trust’s rights to receive certain revenues, including Base Rentals, under the
20 2012C Lease are to be executed and delivered by the Trustee; and

21 WHEREAS, the 2012C Certificates by the Trust are to be sold pursuant to the 2012C Indenture
22 contingent upon approval of the Council of the Quitclaim Deed and the 2012C Lease by this ordinance.

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

1 **Section 1. *Ratification of Actions.*** All action heretofore taken, not inconsistent with the
2 provisions of this ordinance, by the City or its officers, directed toward the sale by the City to the Trust
3 of the Denver Properties and the leasing by the City from the Trust of the Denver Properties pursuant to
4 the 2012C Lease are hereby ratified, approved and confirmed.

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

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

12 (1) the sale by the City of the Denver Properties pursuant to the Quitclaim
13 Deed; and

14 (2) the leasing of the Denver Properties pursuant to the terms and
15 provisions of the 2012C Lease.

16 The Council hereby authorizes (1) the sale of the Denver Properties to the Trust pursuant to the
17 Quitclaim Deed and (2) the leasing of the Denver Properties, constituting the Leased Property under
18 the 2012C Lease, from the Trust under and pursuant to the terms and provisions of the 2012C Lease.

19 **Section 3. *Approvals; Execution of Documents; Authorized Officers.*** The Quitclaim
20 Deed and the 2012C Lease in substantially the forms as filed in Clerk's Filing No. _____-A and Clerk's
21 Filing No. _____, respectively, are in all respects approved. The Mayor is hereby authorized and
22 directed to execute and deliver, and the Clerk is hereby authorized and directed to affix the seal of the
23 City to, and attest, the Quitclaim Deed in substantially the form filed with the Clerk in Clerk's Filing No.
24 _____-A and the Mayor and other appropriate City officials are authorized and directed to execute
25 and deliver the 2012C Lease, in substantially the form filed with the Clerk in Clerk's Filing No. ____.

1 **Section 4. *No General Obligation or Other Indebtedness.*** The obligation of the City to
2 make rental payments under the 2012C Lease is subject to annual appropriation by the Council and
3 constitutes an undertaking of the City to make current expenditures. No provision of this ordinance, the
4 Quitclaim Deed, the 2012C Lease, the 2012C Indenture or the Series 2012C Certificates shall be
5 construed as constituting or giving rise to a general obligation or other indebtedness or a multiple fiscal
6 year direct or indirect debt or other financial obligation of the City within the meaning of any home rule,
7 constitutional or statutory debt limitation nor a mandatory charge or requirement against the City in any
8 ensuing fiscal year beyond the current fiscal year. The City may choose to not renew, and thereby
9 terminate its obligations under the 2012C Lease on an annual basis.

10 **Section 5. *Reasonable Rentals.*** The Council hereby determines and declares that the
11 Base Rentals due under the 2012C Lease do not exceed a reasonable amount so as to place the City
12 under an economic compulsion to renew and therefore not to terminate the 2012C Lease or to exercise
13 its option to purchase the Leased Property, all pursuant to the 2012C Lease.

14 **Section 6. *Consent to Sale of 2012C Certificates.*** The Council hereby acknowledges and
15 consents to (1) the 2012C Indenture and (2) the execution and delivery by the Trustee of, the forms of,
16 and the private placement sale of, the 2012C Certificates, all pursuant to the 2012C Indenture, in
17 substantially the form of the 2012C Indenture filed with the Clerk in Clerk's Filing No. _____-B.

18 **Section 7. *Additional Documents; Delegated Powers.*** The Clerk is hereby authorized
19 and directed to attest all signatures and acts of any official of the City in connection with the matters
20 authorized by this ordinance. The Mayor, the Auditor, the Clerk, the Manager of Finance, the City
21 Attorney and other officials and employees of the City are hereby authorized to execute and deliver for
22 and on behalf of the City any and all additional certificates, documents and other papers and to perform
23 all other acts that they may deem necessary or appropriate in order to implement and carry out the
24 transactions and other matters authorized by this ordinance. Such necessary or appropriate actions
25 include, without limitation,

(1) the execution and delivery by the Manager of Finance of supplements to the Base Rentals Schedules (Exhibits C-1, C-2 and C-3) of the 2012C Lease prior to the recording of the 2012C Lease in the Denver County real estate records, such supplement to evidence the actual Base Rentals due under Lease Purchase Agreement No. 2012C, all within the limitations set forth on the Base Rentals Schedules (Exhibits C-1, C-2 and C-3) in the form of the 2012C Lease filed with the Clerk in Clerk's Filing No. _____, and

(2) the execution and delivery of such certificates and opinions as may be reasonably required by the Trustee, the private placement purchaser of the 2012C Certificates or the City's counsel relating to, among other things, the tenure and identity of the officials of the City and the Council, the absence of pending litigation affecting the validity of the Quitclaim Deed and the 2012C Lease, federal and state securities laws, and expectations and covenants relating to the excludability from gross income for federal income tax purposes of the portion of Tax-Exempt Base Rentals under and as defined in the 2012C Lease and paid as interest under the 2012C Lease, all as contemplated by this ordinance and are not inconsistent with this ordinance.

Section 8. Appropriation of 2012 Base Rentals. From the [Capital Improvement] Fund, Accounting No. _____, out of moneys not otherwise appropriated and in addition to any supplemental appropriations or rescissions, there is hereby appropriated to the appropriation accounts hereinafter designated the amount of money following each such designation, to be expended for the purposes and upon the authorizations in this Ordinance set forth:

<u>Accounting Number</u>	<u>Appropriation Account</u>	<u>Project Identification Number</u>	<u>Expending Authority</u>	<u>Amount</u>
_____	_____	_____	Manager of Finance	\$ _____

The Manager of Finance is hereby authorized and directed to make such book and record entries and to do such other things as may be necessary to accomplish the purposes of this Ordinance.

1 **Section 9. *Severability.*** If any section, paragraph, clause or provision of this ordinance
2 shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such
3 section, paragraph, clause or provision shall not affect any of the remaining provisions of this
4 ordinance.

5 **Section 10. *Effective Date.*** This ordinance shall take effect as provided in the Charter of the
6 City.

7 **Section 11. *Publications.*** The bill for this ordinance and this ordinance are hereby
8 authorized and directed to be published as required by the Charter.

9 **Section 12. *Recordation and Authentication.*** The ordinance shall be recorded, after its
10 passage, in the ordinance record of the City, kept for that purpose, and authenticated by the signature
11 of the Mayor and attested and countersigned by the Clerk.

12

1 COMMITTEE APPROVAL DATE: _____, 2012

2 MAYOR-COUNCIL DATE: _____, 2012

3 PASSED BY THE COUNCIL _____, 2012

4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____, 2012

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

9 NOTICE PUBLISHED IN THE DAILY JOURNAL _____, 2012 AND _____, 2012

10 PREPARED BY: PECK, SHAFFER & WILLIAMS LLP and KLINE ALVARADO VEIO, PC;
11 DATE: _____, 2012

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

16 Douglas J. Friednash, City Attorney

17 BY: _____, _____ City Attorney DATE: _____