

**BY AUTHORITY**

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2011

COUNCIL BILL NO. CB11-0419  
COMMITTEE OF REFERENCE:  
General Government & Finance

**A BILL**

**For an ordinance authorizing the exercise of purchase options under certain existing lease purchase agreements, the approval and execution of an annually renewable Lease Purchase Agreement No. 2012A-B (Public Parking Unit/Cultural Center Parking Garage – Tax-Exempt and Taxable) between the Denver Public Facilities Leasing Trust 2012A-B, as lessor, and the City and County of Denver, as lessee, the execution of other documents related thereto; 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 and providing 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, as lessee, has heretofore entered into the following Lease Purchase Agreements:

(1) Build to Suit Lease Purchase Agreement No. 2002A (Tax-Exempt) for the Public Parking Unit Portion of the Denver Cultural Center Parking Garage Project dated as of May 1, 2002 (the “2002A Lease”), between Denver Public Facilities Leasing Trust 2002A (the “2002A-B Trust”), as lessor, and the City, as lessee, on file with the City Clerk for the City and County of Denver (the “Clerk”) in Clerk’s Filing No. 02-187-H; and

(2) Build to Suit Lease Purchase Agreement No. 2002B (Taxable) for the Private Parking Portion of the Denver Cultural Center Parking Garage Project dated as of

1 May 1, 2002 (the "2002B Lease"), between the 2002A-B Trust, as lessor, and the City, as  
2 lessee; and

3 (3) Lease Purchase Agreement No. 2003A (Cherry Creek North Parking  
4 Project) dated as of March 15, 2003 (the "2003A Lease"), between Denver Capital Leasing  
5 Corporation, ("DCLC") as lessor, and the City, as lessee; and

6 WHEREAS, the City was granted an option to purchase (1) the "Private Parking Unit" (as  
7 defined under the 2002B Lease) of the Denver Cultural Center Parking Garage to be constructed  
8 and, as now constructed, referred to herein as the Parking Garage, and (2) the "Leased Property"  
9 (as defined under the 2003A Lease), pursuant to the terms and conditions stated in the 2002B  
10 Lease and the 2003A Lease, respectively (the "2002B and 2003A Purchase Options"); and

11 WHEREAS, the leased property under the 2002A Lease is defined as the "Public Parking  
12 Unit" of the Parking Garage which Public Parking Unit is owned by the 2002A-B Trust, as  
13 hereinafter defined; and

14 WHEREAS, pursuant to that certain Declaration and Indenture of Trust dated as of May 1,  
15 2002 (the "2002A-B Indenture"), between Capital Asset Finance Corporation, as settlor, and The  
16 Bank of Cherry Creek, a Branch of Western National Bank (the "2002A-B Trustee"), on file in  
17 Clerk's Filing No. 02-187-J, the 2002A-B Trustee

18 (1) created a trust denominated the "Denver Pubic Facilities Leasing Trust  
19 2002A-B" (the "2002A-B Trust"), and

20 (2) executed and delivered two series of Certificates of Participation denominated  
21 as "Certificates of Participation, Series 2002A (Tax-Exempt)" (the "2002A Certificates") and  
22 "Certificates of Participation, Series 2002B (Taxable)" (the "2002B Certificates" and,  
23 collectively, with the 2002A Certificates, the "2002A-B Certificates") evidencing  
24 proportionate interests in the base rentals and other revenues under the 2002A Lease and  
25 the 2002B Lease, respectively; and

26 WHEREAS, after the date of creation of the 2002A-B Trust and the execution and delivery  
27 of the 2002A-B Certificates, (1) UMB Bank, n.a., has become the successor Trustee to the 2002A-  
28 B Trustee and is referred to herein as the "Trustee" in its capacity as Trustee of the Trust (as  
29 hereinafter defined) and in respect of the 2012A-B Certificates as hereinafter defined and (2)  
30 pursuant to the 2012A-B Indenture, as hereinafter defined, the name of the 2002A-B Trust is to be  
31 changed to the "Denver Public Facilities Leasing Trust 2012A-B" and is referred to herein as the  
32 "Trust"; and

1 WHEREAS, pursuant to that certain Mortgage and Indenture of Trust dated as of March 15,  
2 2003 (the "2003A Indenture"), between DCLC, as mortgagor, and Wells Fargo Bank West,  
3 National Association (now Wells Fargo Bank, National Association), as trustee and mortgagee, a  
4 series of Certificates of Participation denominated as "Certificates of Participation, Series 2003A"  
5 (the "2003A Certificates") evidencing proportionate interests in the base rentals and other  
6 revenues under the 2003A Lease were executed and delivered; and

7 WHEREAS, it is economically advantageous at this time to effect a refunding transaction in  
8 respect of the 2002A Lease, the 2002B Lease, the 2003A Lease, the 2002A-B Indenture, the  
9 2003A Indenture, the 2002A-B Certificates and the 2003A Certificates by restructuring the Base  
10 Rentals due under the 2002A Lease and providing for the prepayment in full of the base rentals  
11 and other revenues due under, and the termination of, the 2002B Lease and the 2003A Lease;  
12 and

13 WHEREAS, in order to provide for the restructuring of the Base Rentals due under the  
14 2002A Lease and other amendments to the 2002A Lease required to accomplish such refunding  
15 transaction, it is necessary that the 2002A Lease be amended and restated; and

16 WHEREAS, there have been filed on November 30, 2011, in the office of the Clerk the  
17 substantially final forms of the following:

18 (1) Lease Purchase Agreement No. 2012A-B (Public Parking Unit/Cultural Center  
19 Parking Garage - Tax-Exempt and Taxable) including Exhibits A through D thereto to be  
20 dated its date of execution and delivery (the "2012A-B Lease"), in Clerk's Filing No. 11-983,  
21 between the 2012A-B Trust, as lessor, and the City, as lessee, amending and restating in  
22 its entirety the 2002A Lease; and

23 (2) Declaration and Indenture of Trust (Public Parking Unit/Cultural Center  
24 Parking Garage – Tax-Exempt and Taxable) to be dated its date of execution and delivery  
25 (the "2012A-B Indenture"), in Clerk's Filing No. 11-983-A, entered into by UMB Bank, n.a.,  
26 Denver, Colorado, as trustee (the "Trustee"), amending and restating in its entirety the  
27 2002A-B Indenture, under which Refunding Certificates of Participation, Series 2012A  
28 (Tax-Exempt) (the "2012A Certificates"), in the aggregate maximum principal amount of  
29 \$11,885,000 evidencing proportionate interests in the Trust's rights to receive certain  
30 revenues, including Tax-Exempt Base Rentals, under the 2012A-B Lease and Refunding  
31 Certificates of Participation, Series 2012B (Taxable) (the "2012B Certificates"), in the  
32 aggregate maximum principal amount of \$1,870,000 evidencing proportionate interests in  
33 the Trust's rights to receive certain revenues, including Taxable Base Rentals, under the

1 2012A-B Lease are to be executed and delivered by the Trustee, the 2012A Certificates  
2 and the 2012B Certificates being referred to herein collectively as the “2012A-B  
3 Certificates”; and

4 (3) Preliminary Official Statement, in Clerk’s Filing No. 11-983-B (the “Preliminary  
5 Official Statement”), relating to the 2012A-B Lease, which shall also constitute the form of a  
6 related final Official Statement (the “Official Statement”); and

7 WHEREAS, the City has determined that it is convenient and in the best interests of the  
8 City that the City (a) exercise its 2002B and 2003A Purchase Options and (b) enter into the  
9 2012A-B Lease in order to effect the refunding transaction and continue to lease the Public  
10 Parking Unit of the Parking Garage (collectively the “2012A-B Leased Property”) from the Trust,  
11 for use by the City; and

12 WHEREAS, the 2012A-B Certificates are to be sold pursuant to the 2012A-B Indenture and  
13 the Preliminary Official Statement.

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

15 **Section 1. *Ratification of Actions.*** All action heretofore taken, not inconsistent with the  
16 provisions of this ordinance, by the City or its officers, directed toward the exercise of the City’s  
17 2002A and 2003B Purchase Options and, in order to effect the refunding transaction, the  
18 continuation of the leasing by the City from the Trust of the Public Parking Unit of the Parking  
19 Garage pursuant to the 2012A-B Lease is hereby ratified, approved and confirmed.

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

24 The Council hereby finds and determines, pursuant to the City’s home rule powers, that the  
25 following actions are necessary, convenient and in furtherance of the governmental purposes of  
26 the City and are in the best interests of the City and its residents:

- 27 (1) the exercise of the 2002B and 2003A Purchase Options; and  
28 (2) effecting the refunding transaction and continuing the leasing of the Public  
29 Parking Unit of the Parking Garage pursuant to the terms and provisions of the 2012A-B  
30 Lease.

31 The Council hereby authorizes (1) the exercise of the City’s 2002B and 2003A Purchase  
32 Options and (2) the leasing of the Public Parking Unit of the Parking Garage from the Trust under  
33 and pursuant to the terms and provisions of the 2012A-B Lease.

1           **Section 3. *Approvals; Execution of Documents; Authorized Officers.*** The 2012A-B  
2 Lease in substantially the form as filed in Clerk's Filing No. 11-983 is in all respects approved.  
3 The Mayor is hereby authorized and directed to execute and deliver, and the Clerk is hereby  
4 authorized and directed to affix the seal of the City to, and attest, the 2012A-B Lease, in  
5 substantially the form as filed with the Clerk in Clerk's Filing No. 11-983.

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

15           **Section 5. *Reasonable Rentals.*** The Council hereby determines and declares that the  
16 Base Rentals due under the 2012A-B Lease do not exceed a reasonable amount so as to place  
17 the City under an economic compulsion to renew and therefore not to terminate the 2012A-B  
18 Lease or to exercise its option to purchase the ownership interest of the Trust in the Public  
19 Parking Unit of the Parking Garage, pursuant to the 2012A-B Lease.

20           **Section 6. *Consent to Sale of 2012A-B Certificates.*** The Council hereby  
21 acknowledges and consents to (1) the 2012A-B Indenture, (2) the execution and delivery by the  
22 Trustee of, the form of, and sale of, the 2012A-B Certificates, all pursuant to the 2012A-B  
23 Indenture, in substantially the form of the 2012A-B Indenture filed with the Clerk in Clerk's Filing  
24 No. 11-983-A and (3) the distribution of the Preliminary Official Statement, in substantially the form  
25 filed with the Clerk in Clerk's Filing No. 11-983-B and the Official Statement to prospective  
26 purchasers and the purchasers of the 2012A-B Certificates.

27           The information with respect to the City contained in the Official Statement is approved and  
28 authorized. The distribution of the information contained in the Official Statement with respect to  
29 the City is hereby approved. The Manager of Finance is authorized to execute a "deemed final"  
30 certificate in respect of the Preliminary Official Statement for the purpose of Rule 15c2-12 under  
31 the Securities and Exchange Act of 1934 and enter into the Continuing Disclosure Undertaking,  
32 the form of which is attached as Appendix E to the Preliminary Official Statement.

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

9           (1) the execution and delivery by the Manager of Finance of a supplement to the  
10 Base Rentals Schedule (Exhibit C) of the 2012A-B Lease prior to the recording of the  
11 2012A-B Lease in the real estate records, such supplement to evidence the actual Base  
12 Rentals due under Lease Purchase Agreement No. 2012A-B, within the limitations set forth  
13 on the Base Rentals Schedule in the form of the 2012A-B Lease filed with the Clerk in  
14 Clerk's Filing No. 11-983, and

15           (2) the determination by the Manager of Finance of the dated date (which shall  
16 be the delivery date) the 2012A-B Lease, and

17           (3) the execution and delivery of such certificates and opinions as may be  
18 reasonably required by the City's counsel, the Trustee or the underwriter for the 2012A-B  
19 Certificates or relating to, among other things, the tenure and identity of the officials of the  
20 City and the Council, the absence of pending litigation affecting the validity of the 2012A-B  
21 Lease, federal and state securities laws, and expectations and covenants relating to the  
22 excludability from gross income for federal income tax purposes of the portion of Tax-  
23 Exempt Base Rentals under and as defined in the 2012A-B Lease designated in the  
24 2012A-B Lease and paid as interest under the 2012A-B Lease, all as contemplated by this  
25 ordinance and are not inconsistent with this ordinance.

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

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

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

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

4 CONSENT COMMITTEE APPROVAL DATE: June 9, 2011

5 MAYOR-COUNCIL DATE: June 14, 2011

6 PASSED BY THE COUNCIL \_\_\_\_\_ 2011

7 \_\_\_\_\_ - PRESIDENT

8 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_

9 2011

10 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
11 EX-OFFICIO CLERK OF THE  
12 CITY AND COUNTY OF DENVER

13 NOTICE PUBLISHED IN THE DAILY JOURNAL \_\_\_\_\_ 2011; \_\_\_\_\_ 2011

14 PREPARED BY: PECK, SHAFFER & WILLIAMS LLP and GCR LLP - December 1, 2011

15 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of  
16 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
17 ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to  
18 §3.2.6 of the Charter.

19 Douglas J. Friednash City Attorney

20 BY: \_\_\_\_\_, \_\_\_\_\_ City Attorney - \_\_\_\_\_ 2011