

### FIRST AMENDMENT TO COOPERATIVE AGREEMENT

This First Amendment ("First Amendment") to that certain Cooperative Agreement dated as of April 5, 1991, 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 nonprofit corporation (the "Foundation"), is hereby made and entered into to be effective as of June 26, 1995.

vjv  
 CITY CLERK  
 OFFICIAL COPY

#### WITNESSETH:

WHEREAS, the parties have entered into the Cooperative Agreement, pursuant to which the Foundation has established and presently maintains, manages, operates and controls certain Facilities (as defined in the Cooperative Agreement) for the use and benefit of the public, including the botanic garden and arboretum located at Ninth Avenue and York Street, Denver, Colorado (the "Botanic Gardens"); and

WHEREAS, the parties desire to amend the Cooperative Agreement, for the purpose of fostering communication, cooperation and accountability between the Foundation and the citizens of the City, including in particular those residing in the neighborhoods surrounding the Botanic Gardens.

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants made herein and in the Cooperative Agreement, the parties hereto agree as follows:

1. CAPITALIZED TERMS. All capitalized terms used herein but not defined in this First Amendment shall have the meanings assigned to them in the Cooperative Agreement.
2. MASTER PLANS AND PROJECT APPROVAL. Section 5 of the Cooperative Agreement is hereby amended in its entirety to read as follows:

Post-It Fax Note	7871	Date	8/2/96
To	Kenneth	From	J. Walker

"5. MASTER PLANS AND PROJECT APPROVAL

(a) The current master plan, including all phases thereof (whether or not previously approved by any City agency or official, or otherwise), any future master plan (whether for Facility improvements or major programmatic strategies) that may be developed by the Foundation, and any material change to any such master plan shall be submitted to the Manager of Parks and Recreation, and to the extent such master plan or material change thereto relates to the Botanic Gardens, also to the Neighborhood Advisory Committee described in section 36 hereof and the Planning Department for the City and County of Denver (the "Planning Department"), for review and comment in advance of implementation of such plan or change by the Foundation. To the extent any such plan or material change thereto (i) deals directly with the design, development, use or operations of the Facilities, or (ii) materially affects the Facilities in any way, such plan or change shall not be adopted by the Foundation without the approval of the Manager of Parks and Recreation. It is understood that, while the Foundation is not obligated to adopt a master plan, any programmatic strategies for the operation or use of the Facilities not contemplated by an adopted master plan must be approved in advance by the Manager of Parks and Recreation. The Foundation shall give the Manager of Parks and Recreation, and to the extent such programmatic strategies relate to the Botanic Gardens, the Neighborhood Advisory Committee and the Planning Department, notice of the pending development of any master plan as soon as practicable and shall provide them a reasonable opportunity to participate in the development of same. The Manager of Parks and Recreation shall, promptly after submission by the Foundation of any such plan, accompanied by all written reports and comments, if any, which have theretofore been submitted to the Foundation by the Neighborhood Advisory Committee or the Planning Department, either approve or disapprove of such plan, either in whole or in part.

141291

provided that any disapproval shall be accompanied by a written statement of the specific reason(s) therefor. The parties acknowledge and agree that the Foundation shall not be obligated to execute any master plan adopted pursuant to this subsection (a). For purposes of this subsection (a), a material change to a master plan shall mean any written statement or other tangible expression of the Foundation's strategic plans or objectives that changes, modifies or amplifies one or more material provisions of an existing master plan of the Foundation, whether or not designated as an amendment to that master plan; however, decisions made and actions taken by the Foundation in the normal course of maintaining, managing, operating and controlling the Facilities, or in implementing, interpreting or applying an existing master plan, shall not as such be deemed changes to a master plan for purposes of this subsection.

(b) Any Facility improvement or programmatic strategy contemplated by an approved master plan or otherwise approved by the Manager of Parks and Recreation shall not require further approval by the Manager for implementation; provided that if a public process is required, either by law or pursuant to section 5(e) below, and if such public process was not undertaken in connection with the approval of the master plan or otherwise, then implementation shall be contingent on completion of any required public process.

(c) Any new Facilities, any new buildings or other material general improvements to the Facilities and any major changes (including major modifications, additions, eliminations and changes of use) to existing Facilities or buildings (but excluding any changes or improvements to plantings, horticultural exhibits or landscaping and excluding any repairs and maintenance to such Facilities, buildings or improvements) not contemplated by an approved master plan shall be submitted to the Manager of Parks and Recreation, and to the extent such Facilities, buildings or improvements, or major changes thereto, relate to the Botanic Gardens,

also to the Neighborhood Advisory Committee and the Planning Department, for review and comment in advance of the implementation of such changes by the Foundation. All written reports and comments, if any, submitted to the Foundation by the Neighborhood Advisory Committee or the Planning Department shall be submitted to the Manager of Parks and Recreation prior to his approval or disapproval of the Facilities, buildings or improvements, or major changes thereto. The same shall be approved in advance by the Manager of Parks and Recreation (subject to any public hearing or other process required by law or pursuant to subsection (e) below) and the City Department of Public Works in the manner and to the extent required from time to time by the City Charter, as it now exists or may hereafter be amended from time to time. In the case of any improvement to which the preceding sentence applies, the Foundation shall insure right-of-entry at reasonable hours to any City inspector or other authorized agent of the City to the worksite 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. If the City determines that the work is not being so performed, the City may order that the Foundation cease to conduct the work until there is satisfactory evidence that the work conforms to the approved plans and specifications.

(d) Any programmatic strategy to initiate or permit a new type, level or category of events carried on at the Botanic Gardens that is not part of an approved master plan and that is of a size or scope materially greater than that which has previously been carried on by the Foundation as of the date of this First Amendment shall be submitted to the Manager of Parks and Recreation, the Neighborhood Advisory Committee and the Planning Department for review and comment in advance of the implementation of such programmatic strategy. Any such

programmatic strategy shall be approved in advance by the Manager of Parks and Recreation. For purposes of this section 5(d), "events" shall include, without limitation, concerts, private parties, weddings or receptions, especially when such events may contribute significantly to increased traffic congestion, parking or other potentially adverse impacts on surrounding neighborhoods; however, a "programmatic strategy" shall not refer to an individual event or to the implementation of a programmatic strategy that has been previously reviewed and approved in accordance with this section 5.

(e) If the Manager of Parks and Recreation proposes to approve any matter described above in this section 5, the Manager of Parks and Recreation shall give written notice of such proposed approval to the Neighborhood Advisory Committee and the Neighborhood Advisory Committee may, within 20 days after such notice, by written notice to the Planning Director of the City and County of Denver, the Manager of Parks and Recreation and the Foundation, request that the Planning Director determine, after consultation with the Manager of Parks and Recreation, the Neighborhood Advisory Committee and the Foundation, whether the matter proposed to be approved is significant enough in size, scope, cost or capital expenditure, and potential impact to the parks and neighborhoods located within one mile of the Botanic Gardens so as to justify a presentation to the Planning Board for a public review and hearing process. If the Planning Director determines that a presentation shall be made to the Planning Board, the Planning Board shall promptly determine whether a public review and hearing process is necessary, taking into consideration whatever public hearing or other review process may have already occurred in connection with the proposed approval. If so, the Planning Board shall conduct the process and shall submit its recommendations to the Manager of Parks and Recreation for consideration in finalizing its proposed approval. The Manager of Parks and

Recreation shall then either confirm, modify or withdraw such approval, as the Manager shall deem appropriate. If the Planning Director determines that a presentation to the Planning Board is not appropriate, no further process shall be required prior to the Manager's finalization of approval. The process described in this subparagraph 5(e) is independent of, and separate from, any public process or legal requirements otherwise applicable."

3. FOUNDATION GOVERNANCE. Sections 11(a)(1) and (2) of the Cooperative Agreement are hereby amended in their entirety to read as follows:

"(1) The Mayor of the City and the Manager of Parks and Recreation shall each be ex-officio voting members of the Board of Trustees of the Foundation; provided, however, that beginning with the annual meeting of the Foundation to be held in 1997, only the Mayor (or, at the election and pleasure of the Mayor, the Manager of Parks and Recreation) shall be an ex-officio voting board member.

"(2) The Board of Trustees of the Foundation shall be expanded by the addition of four voting term members, two within 60 days after the date of this First Amendment, and two more at the first annual meeting of the Foundation to be held after the date of this First Amendment. These four new voting term members will be Mayoral appointees, bringing to six the total number of voting term members that shall be appointed by the Mayor. The six Mayoral appointees shall reside within one mile of the Botanic Gardens at the time of their appointment (collectively, the "Neighborhood Representatives") and shall each be appointed or reappointed by the Mayor for a three-year term from a slate of candidates nominated as follows: The Neighborhood Advisory Committee shall nominate up to ten candidates for each Neighborhood Representative position, from which list the Board of Trustees of the Foundation shall select up to three candidates for each position to be presented to the Mayor as candidates mutually

acceptable to both the Neighborhood Advisory Committee and the Foundation. Two Neighborhood Representatives shall be appointed within 60 days after the date of this First Amendment, two Neighborhood Representatives shall be appointed at the first annual meeting of the Foundation to be held after the date of this First Amendment, two Neighborhood Representatives shall be appointed at the second annual meeting of the Foundation to be held after the date of this First Amendment (replacing the two current Mayoral appointees), and two Neighborhood Representatives shall be appointed in every year thereafter as the terms of the previous Neighborhood Representatives expire. Accordingly, beginning in 1997 and continuing indefinitely thereafter, six of the 50 voting member positions on the Board of Trustees will be Neighborhood Representatives; provided that if the total number of voting members of the Board of Trustees of the Foundation shall be increased or decreased, the number of Neighborhood Representatives appointed as trustees by the Mayor shall also be proportionately increased or decreased, but in no event to fewer than three Neighborhood Representatives. As members of the Board of Trustees, the Neighborhood Representatives shall abide by all laws applicable to them as trustees and by all bylaws, rules, regulations and policies adopted by the Foundation for its trustees; provided, however, that the Neighborhood Representatives shall be permitted, to the extent not inconsistent with their duties as trustees, to make such disclosures of information that is not "confidential information," as defined below, as may be requested by the Neighborhood Advisory Committee or as may be required to keep such Committee informed and apprised as to activities and plans at or for the Botanic Gardens. For purposes of the preceding sentence, "confidential information" shall include all information reasonably identified as either confidential or proprietary by the Foundation and shall be presumed to include, without limitation, all Foundation information about specific donors and contributions, all Foundation

personnel information, and all information about any pending or threatened investigations, complaints, petitions, claims or litigation by or against the Foundation.

4. NONDISCRIMINATION Section 15 of the Cooperative Agreement is hereby amended in its entirety to read as follows:

"15. NONDISCRIMINATION The Foundation agrees to comply with all applicable laws concerning nondiscrimination against persons because of their race, color, sex, sexual orientation, religion, national origin, physical handicap or disability in connection with membership on the Board of Trustees of the Foundation, access to any of the Facilities and participation in any public program at the Facilities. In connection with the performance of work under this Cooperative Agreement, the Foundation 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, gender, age, military status, sexual orientation, marital status, or physical or mental disability, and the Foundation further agrees to insert the foregoing provision in all subcontracts hereunder."

5. NEIGHBORHOOD ADVISORY COMMITTEE. The Cooperative Agreement is hereby amended to add the following section 36, which shall read in its entirety as follows:

"36. NEIGHBORHOOD ADVISORY COMMITTEE.

"(a) The Neighborhood Advisory Committee shall be 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. The Qualified Neighborhood Organizations shall strive to appoint as Committee members persons who reflect the racial and ethnic composition of their organizations. For these



purposes, a Qualified Neighborhood Organization means (1) Morgan's Historic District Homeowners' Association, Denver East Central Civic Association, Capital Hill United Neighborhoods, Inc., Congress Park Neighbors, Inc. and 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 the Botanic Gardens; and (3) any other neighborhood organization approved by the Mayor. In addition, (1) the Executive Director of the Foundation or his or her designee, (2) the City Councilperson for the Council District that includes the Botanic Gardens, and (3) each of the Neighborhood Representatives on the Foundation Board of Trustees, shall each be an ex-officio non-voting member of the Neighborhood Advisory Committee entitled to notice of and to participate in all meetings of the Committee. Any one or more of the other members of the Foundation Board of Trustees may also from time to time attend the meetings of the Neighborhood Advisory Committee as observers. If there are ever more than 25 persons eligible to be appointed to the Committee, the Mayor shall determine which Qualified Neighborhood Organizations shall be entitled to appoint members to the Committee.

"(b) Meetings shall be held between representatives of the Neighborhood Advisory Committee and representatives of the Foundation's Board of Trustees at least twice each year at times mutually agreed upon by them.

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

- (1) Inform the Foundation of significant neighborhood issues relating to the Botanic Gardens;
- (2) Gather and disseminate information to the neighborhoods surrounding the Botanic Gardens as to its activities and future plans; and

(3) Participate in the compilation and selection of nominees to serve as Neighborhood Representatives to the Foundation's Board of Trustees, as described in section 1(c) above.

"(d) The Neighborhood Advisory Committee shall be an advisory committee only and shall have no legal, policy making or other authority binding on or within the Foundation.

"(e) The Foundation shall be free to establish such other committees, advisory or otherwise, having such duties and authorities as it shall determine."

6. FULL FORCE AND EFFECT. Except as herein provided, all other terms, conditions and provisions of the Cooperative Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Amendment to Cooperative Agreement as of the day and year first above written.

ATTEST:

*[Handwritten Signature]*

Secretary

DENVER BOTANIC GARDENS, INC.,  
a Colorado nonprofit corporation

By: *[Handwritten Signature]*  
Its: PRESIDENT

ATTEST:

*[Handwritten Signature]*

ARIE P. TAYLOR, Clerk and Recorder,  
Ex-Officio Clerk of the City and  
County of Denver

CITY AND COUNTY OF DENVER

By: *[Handwritten Signature]*  
Mayor

