

1 **BY AUTHORITY**

2 **ORDINANCE NO. _____**

COUNCIL BILL NO. 17-0973

3 **SERIES OF 2017**

COMMITTEE OF REFERENCE

4 **BUSINESS, ARTS, WORKFORCE & AERONAUTICAL SERVICES**

5 **A BILL**

6 **For an ordinance concerning the incurrence of a Junior Lien Obligation**
7 **under the General Junior Lien Bond Ordinance in connection with certain**
8 **payments required to be made under the Great Hall Development**
9 **Agreement; providing for the creation of a related account in connection**
10 **therewith; ratifying action previously taken; providing for other related**
11 **matters; and providing the effective date hereof.**

12 (1) WHEREAS, the City and County of Denver, in the State of Colorado (the "City"
13 and the "State", respectively), is a municipal corporation duly organized and existing as a
14 home rule city under Article XX, State Constitution, and under the Charter of the City, and is a
15 political subdivision of the State; and

16 (2) WHEREAS, pursuant to Article XX, State Constitution, the Charter of the City,
17 and the plenary grant of powers as a home rule city, the City has acquired certain airport
18 facilities constituting its Airport System, the management, operation, and control of which is
19 vested by the Charter of the City in the Department of Aviation of the City (the "Department");
20 and

21 (3) WHEREAS, by Ordinance No. 755, Series of 1993 (the "Enterprise Ordinance")
22 the City designated the Department as an "enterprise" within the meaning of Section 20,
23 Article X, State Constitution; and

24 (4) WHEREAS, the Enterprise Ordinance provides that, the City owns the
25 Department; the Manager of the Department of Aviation (the "Manager") is the governing body
26 of the Department; and the Department has the authority to issue its own bonds or incur other
27 financial obligations in the name of the City, payable solely from revenues derived or to be
28 derived from the functions, services, benefits or facilities of the Department or from any other
29 available funds, as authorized by ordinance after approval and authorization by the Manager;
30 and

1 (5) WHEREAS, pursuant to Ordinance No. 626, Series of 1984 (as amended and
2 supplemented from time to time, the "General Bond Ordinance") there have heretofore been
3 issued multiple series of bonds and other obligations in respect of the Airport System (the
4 "Senior Bonds" and "Obligations," respectively); and

5 (6) WHEREAS, such Senior Bond and Obligations are secured by an irrevocable and
6 first lien (but not necessarily an exclusive first lien) on the Net Revenues of the Airport System
7 on a parity with the lien thereon in favor of each other; and

8 (7) WHEREAS, pursuant to the General Bond Ordinance, which authorizes the
9 issuance of bonds and other financial obligations payable from the Net Revenues of the Airport
10 System and having a lien thereon subordinate to the lien thereon in favor of the Senior Bonds,
11 Obligations, and any additional bonds or obligations on a parity therewith, the City has adopted
12 the Amended and Restated Airport System General Subordinate Bond Ordinance, Ordinance
13 No. 302, Series of 2013 (as amended and supplemented from time to time, the "General
14 Subordinate Bond Ordinance"); and

15 (8) WHEREAS, pursuant to Section 705 of the General Subordinate Bond Ordinance,
16 which authorizes the issuance by the City, for and on behalf of the Department, of Junior Lien
17 Obligations (as defined in the General Subordinate Bond Ordinance), the City has adopted the
18 Airport System General Junior Lien Bond Ordinance, Ordinance No. 17-0972, Series of 2017 (as
19 amended and supplemented from time to time, the "General Junior Lien Bond Ordinance"); and

20 (9) WHEREAS, Junior Lien Obligations are defined under the General Subordinate
21 Bond Ordinance as "bonds, notes, certificates, commercial paper, or other securities, contracts
22 or obligations relating to the Airport System, payable from Net Revenues, and having a lien
23 thereon subordinate and junior to the lien thereon of Subordinate Bonds and Subordinate
24 Obligations"; and

25 (10) WHEREAS, such definition of Junior Lien Obligations contained in the General
26 Subordinate Bond Ordinance is bifurcated in the General Junior Lien Bond Ordinance and
27 encompassed by two separate definitions – Junior Lien Obligations and Junior Lien Bonds (as
28 each is defined in the General Junior Lien Bond Ordinance); and

29 (11) WHEREAS, the Hotel Junior Lien Obligation (as defined in the General Junior Lien
30 Bond Ordinance) is currently the only Junior Lien Obligation entitled to the rights and benefits of
31 the General Junior Lien Bond Ordinance and there are no Junior Lien Bonds Outstanding; and

1 (12) WHEREAS, the Department is currently undertaking a project to revitalize the
2 Jeppesen Terminal (the "Terminal") within the Airport, which project is commonly referred to as
3 the Great Hall Project (the "Great Hall Project"); and

4 (13) WHEREAS, in connection with the Great Hall Project, the City, for and on behalf of
5 the Department, anticipates entering into a Development Agreement (the "Great Hall
6 Development Agreement") between the City, for and on behalf of the Department, and Denver
7 Great Hall LLC, a Delaware limited liability company (the "Great Hall Developer"), pursuant to
8 which the Great Hall Developer will design, construct, finance, operate and maintain specific
9 areas within the Terminal and will develop, operate and manage the concessions therein; and

10 (14) WHEREAS, in accordance with the Great Hall Development Agreement, the
11 City, for and on behalf of the Department, is required to make Supplemental Payments
12 payable as Monthly Supplemental Payments (as each are defined in the Great Hall
13 Development Agreement) to the Great Hall Developer; and

14 (15) WHEREAS, the Council, having reviewed the Great Hall Development
15 Agreement, has adopted Ordinance No.17-0822, Series of 2017 approving, for and on behalf
16 of the Department, the Great Hall Development Agreement, including the nature and amount
17 of the Supplemental Payments payable as Monthly Supplemental Payments required thereby,
18 and the Department's execution thereof; and

19 (16) WHEREAS, the City, for and on behalf of the Department, desires to declare
20 such obligation to make the Supplemental Payments payable as Monthly Supplemental
21 Payments a Junior Lien Contract Obligation for purposes of the General Junior Lien Bond
22 Ordinance with all the rights and benefits of Junior Lien Obligations under the General Junior
23 Lien Bond Ordinance; and

24 (17) WHEREAS, Section 707 of the General Junior Lien Bond Ordinance provides,
25 among other matters, for the incurrence of Junior Lien Obligations for any Junior Lien
26 Improvement Project by the City, for and on behalf of the Department. Such Junior Lien
27 Obligations shall be incurred pursuant to a Supplemental Junior Lien Bond Ordinance, which
28 (i) may pledge all or any designated portion of the Net Revenues to the payment of such
29 Junior Lien Obligation; (ii) shall provide the terms and conditions of such Junior Lien
30 Obligation; (iii) shall provide for the payment of such Junior Lien Obligation; (iv) may provide
31 that all or any designated provisions of the General Junior Lien Bond Ordinance shall be

1 deemed to apply to the fullest extent practicable; and (vi) may provide for any other related
2 matters; and

3 (18) WHEREAS, as contemplated by the Enterprise Ordinance, the Manager of the
4 Department has executed a resolution (the "Great Hall Junior Lien Obligation Manager's
5 Resolution") approving, authorizing and requesting the incurrence by the City, for and on behalf
6 of the Department, of the "Great Hall Junior Lien Obligation" as set forth and further described
7 herein; and

8 (19) WHEREAS, the Council has determined and does hereby declare that (i) the
9 Great Hall Project shall constitute a Junior Lien Improvement Project; (ii) the City's obligation,
10 for and on behalf of the Department, to make the Supplemental Payments payable as Monthly
11 Supplemental Payments in accordance with the Great Hall Development Agreement (as
12 further defined herein, the "Great Hall Junior Lien Obligation") shall constitute a Junior Lien
13 Contract Obligation; (iii) this Supplemental Ordinance constitutes a Supplemental Junior Lien
14 Bond Ordinance establishing the Great Hall Junior Lien Obligation; (iv) the Great Hall Junior
15 Lien Obligation is to be incurred pursuant to the Great Hall Junior Lien Obligation Manager's
16 Resolution and the provisions of the General Junior Lien Bond Ordinance (as supplemented and
17 amended hereby); and (v) all acts, conditions and things required by law and by the General
18 Junior Lien Bond Ordinance to exist, have happened and have been performed as a condition to
19 the incurrence of the Great Hall Junior Lien Obligation, do or will exist, and have been or will
20 have been performed in regular and due time, form and manner as required by law.

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

22 **ARTICLE I**
23 **DEFINITIONS, RATIFICATION, PUBLICATION**
24 **AND EFFECTIVE DATE**

25 Section 101. Supplemental Ordinance. This ordinance (referred to herein as "this
26 Supplemental Ordinance") is supplemental to, and is adopted for and on behalf of the
27 Department in accordance with the provisions of, the General Bond Ordinance, the General
28 Subordinate Bond Ordinance, and the General Junior Lien Bond Ordinance. This Supplemental
29 Ordinance constitutes a Supplemental Junior Lien Bond Ordinance for purposes of the General
30 Junior Lien Bond Ordinance.

1 Section 102. Meanings and Construction.

2 A. General Bond Ordinance Definitions. All defined terms in this Supplemental
3 Ordinance have the meanings set forth in the General Bond Ordinance, the General
4 Subordinate Bond Ordinance and the General Junior Lien Bond Ordinance except as otherwise
5 expressly provided herein.

6 B. Additional Definitions. For all the purposes of this Supplemental Ordinance
7 and of any other document relating hereto, except where the context by clear implication
8 otherwise requires:

9 (1) "Great Hall Developer" means Denver Great Hall LLC, a Delaware
10 limited liability company, and its permitted successors and assigns under the Great Hall
11 Development Agreement.

12 (2) "Great Hall Development Agreement" has the meaning assigned to it
13 in the recitals hereof.

14 (3) "Great Hall Junior Lien Obligation" means the City's obligation, for
15 and on behalf of the Department, to make Supplemental Payments payable as Monthly
16 Supplemental Payments.

17 (4) "Great Hall Junior Lien Obligation Account" means the special and
18 separate account established within the Principal and Junior Lien Obligation Account of
19 the Junior Lien Obligations Fund pursuant to Section 201 hereof and designated as the
20 "City and County of Denver, Great Hall Junior Lien Obligation Account."

21 (5) "Great Hall Project" has the meaning assigned to it in the recitals
22 hereof.

23 (6) "Monthly Supplemental Payments" has the meaning assigned to it in
24 the Great Hall Development Agreement.

25 (7) "Supplemental Payments" has the meaning assigned to it in the
26 Great Hall Development Agreement.

27 (8) "Terminal" has the meaning assigned to it in the recitals hereof.

28 Section 103. Ratification. All action heretofore taken (not inconsistent with the provisions
29 of this Supplemental Ordinance) by the Council, the Manager, the Manager of Revenue (the
30 "Chief Financial Officer"), and the officers of the City relating to the Great Hall Project, the Great

1 Hall Development Agreement and the Great Hall Junior Lien Obligation be, and the same hereby
2 is, authorized, ratified, approved and confirmed.

3 Section 104. Repealer. All ordinances, resolutions, bylaws, orders and other
4 instruments, or parts thereof, inconsistent herewith are hereby repealed to the extent only of
5 such inconsistency, it being intended that the provisions for the administration of the Great Hall
6 Junior Lien Obligation be governed by the provisions of this Supplemental Ordinance. This
7 repealer shall not be construed to revive any ordinance, resolution, bylaw, order, or other
8 instrument, or part thereof, heretofore repealed.

9 Section 105. Severability. If any section, subsection, paragraph, clause, or other
10 provision of this Supplemental Ordinance shall for any reason be held to be invalid or
11 unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause,
12 or other provision shall not affect any of the remaining provisions of this Supplemental
13 Ordinance.

14 Section 106. Effective Date. This Supplemental Ordinance shall take effect immediately
15 upon its final passage and publication.

16 Section 107. Delegated Powers. The Mayor, Auditor, Clerk, Chief Financial Officer,
17 Manager and other officers and employees of the City are hereby authorized and directed to
18 take all action necessary or appropriate to effect the provisions of this Supplemental Ordinance.

19 **ARTICLE II**
20 **GREAT HALL JUNIOR LIEN OBLIGATION; ADMINISTRATION**
21 **OF FUNDS AND ACCOUNTS**

22 Section 201. Creation of Great Hall Junior Lien Obligation Account. The City hereby
23 establishes and creates within the Principal and Junior Lien Obligation Account of the Junior
24 Lien Obligations Fund a special and separate account to be designated the “City and County of
25 Denver, Great Hall Junior Lien Obligation Account” which account shall be under the control of
26 the City.

27 Section 202. Administration of Great Hall Junior Lien Obligation Account. The Great Hall
28 Junior Lien Obligation shall constitute a Junior Lien Contract Obligation for purposes of the
29 General Junior Lien Bond Ordinance and the Supplemental Payments payable as Monthly
30 Supplemental Payments shall be made by the City, for and on behalf of the Department, when
31 and as required under the Great Hall Development Agreement from amounts credited to the

1 Great Hall Junior Lien Obligation Account. On a monthly basis and only after taking into
2 account any amounts then on deposit therein, the City shall credit to the Great Hall Junior Lien
3 Obligation Account from the Junior Lien Obligations Fund in accordance with Section 502 of the
4 General Junior Lien Bond Ordinance the amount of the Monthly Supplemental Payment as set
5 forth in the invoice received by the Department from the Great Hall Developer under the Great
6 Hall Development Agreement. Only those undisputed Monthly Supplemental Payment amounts
7 shall be made to the Great Hall Developer from the Great Hall Junior Lien Obligation Account.
8 To the extent there are any moneys on deposit in the Great Hall Junior Lien Obligation Account
9 after making each such Monthly Supplemental Payment, such moneys may be used as provided
10 by the General Bond Ordinance.

11 Section 203. Pledge Securing Great Hall Junior Lien Obligation. Subject only to the right
12 of the City to pay Operation and Maintenance Expenses of the Airport System and to the
13 obligations of the City in respect of Senior Bonds and Obligations as provided by the General
14 Bond Ordinance and in respect of Subordinate Bonds and Subordinate Obligations as
15 provided by the General Subordinate Bond Ordinance, the Gross Revenues and all moneys
16 and securities paid or to be paid to, or held or to be held in, the Great Hall Junior Lien
17 Obligation Account are hereby irrevocably pledged to secure the payment of the Great Hall
18 Junior Lien Obligation as provided herein and in accordance with the General Junior Lien
19 Bond Ordinance. This affirms the pledge set forth in Section 203 of the General Junior Lien
20 Bond Ordinance and, with respect to the Great Hall Junior Lien Obligation, shall be valid and
21 binding from and after the date on which the Great Hall Junior Lien Obligation is incurred; and
22 the moneys, as received and hereby pledged, shall immediately be subject to the lien of this
23 pledge without any physical delivery, filing or further act.

24 Section 204. Events of Default. In addition to the event of default provided for in
25 Section 1203 E. of the General Junior Lien Bond Ordinance, there shall be an event of default
26 if the City fails to perform any of the representations, covenants, conditions, agreements, and
27 other provisions contained in the General Junior Lien Bond Ordinance with respect to a Junior
28 Lien Obligation, or in this Supplemental Ordinance on its part to be performed, and such
29 failure continues for sixty days after written notice specifying such failure and requiring the
30 same to be remedied is given to the City by the Great Hall Developer; provided, however, that
31 such action shall not be considered an event of default under this subparagraph if the

1 Manager determines that corrective action has been instituted within such sixty day period and
2 is being diligently pursued.

3 Section 205. Remedies for Default. Upon the happening and continuance of any of the
4 events of default provided for in Section 1203 E. of the General Junior Lien Bond Ordinance or
5 Section 204 hereof, then the Great Hall Developer shall have any and all rights and privileges
6 of the owners of Junior Lien Bonds relating to the remedies set forth in General Junior Lien
7 Bond Ordinance in accordance with Section 1204 hereof. Any amounts payable as
8 Supplemental Payments which have not been paid by the City, for and on behalf of the
9 Department, but which have been earned by the Great Hall Developer under the Great Hall
10 Development Agreement shall be considered the Outstanding amount of the Great Hall Junior
11 Lien Obligation for purposes of Section 1204.

1 COMMITTEE APPROVAL DATE: August 30, 2017

2 MAYOR-COUNCIL DATE: September 5, 2017, by consent

3 PASSED BY THE COUNCIL _____ September 18, 2017

4 Alan Bock - 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: HOGAN LOVELLS US LLP

DATE: September 7, 2017

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

15 Kristin M. Bronson, City Attorney

16 BY: Kristin M. Bronson, Denver City Attorney

DATE: Sep 7, 2017