

1 BY AUTHORITY

2 ORDINANCE NO. _____

COUNCIL BILL NO. CB15-0774

3 SERIES OF 2015

COMMITTEE OF REFERENCE

4 BUSINESS DEVELOPMENT

5 A BILL

6 For an ordinance concerning operation and management of a hotel facility
7 constituting an Airport Facility of the City and County of Denver; providing
8 for the administration of certain hotel revenues and the creation of certain
9 funds and accounts in connection therewith; ratifying action previously
10 taken; and providing the effective date of this ordinance..

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

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

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

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

4 (6) WHEREAS, as contemplated by the Enterprise Ordinance, the General Bond
5 Ordinance and a resolution of the Manager, the City, for and on behalf of the Department,
6 issued, pursuant to Ordinance No. 490, Series of 2012, its Airport System Revenue Bonds,
7 Series 2012B, a portion of the proceeds of which has been and is to be used to defray all or a
8 portion of the costs of constructing, otherwise acquiring and equipping a hotel facility to be
9 located at Denver International Airport (the "Airport Hotel"), which Airport Hotel would constitute
10 an Airport Facility as defined in the General Bond Ordinance; and

11 (7) WHEREAS, in order to provide for the operation and management of the Airport
12 Hotel, the City, for and on behalf of the Department, entered into a Hotel Management
13 Agreement dated as of April 11, 2011 (as amended, the "Hotel Management Agreement") with
14 Westin DIA Operator, LLC, a Delaware limited liability company (the "Hotel Manager"), which
15 provides, among other matters, for the collection of revenues from operation of the Airport Hotel
16 and payment of various costs and expenses related to the operation, management and
17 maintenance of the Airport Hotel; and

18 (8) WHEREAS, also in connection with the operation and management of the Airport
19 Hotel, the City, for and on behalf of the Department, has entered into a Cash Management
20 Agreement (as amended, the "Cash Management Agreement") among the City, for and on
21 behalf of the Department, the Hotel Manager, and US Bank, as the depository bank (the
22 "Depository Bank"), which provides for the administration of various revenues, costs and
23 expenses related to the Airport Hotel; and

24 (9) WHEREAS, pursuant to the General Bond Ordinance, which authorizes the
25 issuance of bonds and other financial obligations payable from the Net Revenues of the
26 Airport System and having a lien thereon subordinate to the lien thereon of the Senior Bonds,
27 Obligations and any additional bonds or obligations on a parity therewith, the City has adopted
28 the Amended and Restated Airport System General Subordinate Bond Ordinance, Ordinance
29 No. 302, Series of 2013 (as amended and supplemented from time to time, the "General
30 Subordinate Bond Ordinance"); and

1 (10) WHEREAS, Section 705 of the General Subordinate Bond Ordinance provides,
2 among other matters, for the issuance by the City, for and on behalf of the Department, of
3 Junior Lien Obligations having a lien on Net Revenues of the Airport System subordinate to
4 the lien thereon of Subordinate Bonds and Subordinate Obligations (as defined in the General
5 Subordinate Bond Ordinance), which Junior Lien Obligations may be authorized by any
6 instrument of the City, and further provides that the instrument authorizing the Junior Lien
7 Obligations, subject to the provisions of the General Bond Ordinance and the General
8 Subordinate Bond Ordinance, (i) may pledge all or any designated portion of the Net
9 Revenues to the payment of the Junior Lien Obligations; (ii) shall provide the terms and
10 conditions of the Junior Lien Obligations; (iii) shall provide for the payment of the Junior Lien
11 Obligations, including the creation of accounts and reserves for such purpose if deemed
12 necessary; and (iv) may provide for any other related matters; and

13 (11) WHEREAS, Section 501 of the General Bond Ordinance provides that, subject
14 to certain limitations (not relevant here), separate, additional accounts and subaccounts may be
15 created within the Airport System Fund by Supplemental Ordinance; and

16 (12) WHEREAS, in order to provide for the administration of the revenues of the
17 Airport Hotel and the payment of costs and expenses related to the Airport Hotel, the City
18 desires, pursuant to Section 501 of the General Bond Ordinance and Section 705 of the
19 General Subordinate Bond Ordinance, to establish certain separate additional funds, accounts
20 and subaccounts within the Airport System Fund, which funds, accounts and subaccounts
21 shall be held and applied as provided herein; and

22 (13) WHEREAS, the Council has determined and does hereby declare that it is
23 necessary and appropriate to provide for the operation and management of the Airport Hotel
24 as provided in this Supplemental Ordinance;

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

26 **ARTICLE I**
27 **DEFINITIONS, RATIFICATION, PUBLICATION**
28 **AND EFFECTIVE DATE**

29 Section 101. Supplemental Ordinance. This ordinance (referred to herein as “this
30 Supplemental Ordinance”) is supplemental to, and is adopted for and on behalf of the

1 Department in accordance with the provisions of, the General Bond Ordinance and the General
2 Subordinate Bond Ordinance.

3 Section 102. Meanings and Construction.

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

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

10 (1) "Airport Hotel" means the hotel to be constructed at Denver
11 International Airport constituting an Airport Facility for purposes of the General Bond
12 Ordinance.

13 (2) "Airport Hotel Junior Lien Obligations Account" means the special
14 and separate account established in the Junior Lien Obligations Fund pursuant to
15 Section 303 hereof and designated as the "City and County of Denver, Airport Hotel
16 Junior Lien Obligations Account."

17 (3) "Available Revenues" has the meaning set forth in the Hotel
18 Management Agreement.

19 (4) "Cash Management Agreement" means the Cash Management
20 Agreement among the City, for and on behalf of the Department, the Hotel Manager, and
21 US Bank as depository bank, in substantially the form included within the Hotel
22 Management Agreement, as amended, and filed with the Clerk.

23 (5) "Cumulative Excess Revenues" has the meaning set forth in the
24 Hotel Management Agreement.

25 (6) "Depository Bank" means US Bank, as the depository bank under
26 the Cash Management Agreement, and any successor thereto appointed as provided in
27 the Cash Management Agreement.

28 (7) "Gross Operating Revenues" has the meaning set forth in the Hotel
29 Management Agreement.

30 (8) "Hotel Management Agreement" means the Hotel Management
31 Agreement dated as of April 11, 2011 between the City, for and on behalf of the

1 Department, and the Hotel Manager, in substantially the form filed with the City Clerk as
2 City Clerk File No. 11-186, as amended and as it may be amended and supplemented
3 from time to time.

4 (9) "Hotel Manager" means the Westin DIA Operator, LLC, a Delaware
5 limited liability company.

6 (10) "Hotel Operating Account" means the special and separate account
7 established in the Revenue Fund pursuant to Section 201 hereof and designated as the
8 "City and County of Denver, Colorado, Airport System Hotel Operating Account," which
9 Hotel Operating Account shall be held by the Depository Bank and administered as
10 provided in the Cash Management Agreement.

11 (11) "Hotel Operating Reserve Fund" means the special and separate
12 subaccount so designated and established in the Airport Hotel Junior Lien Obligations
13 Account by Section 303C hereof.

14 (12) "Hotel Revenues" means the Gross Operating Revenues derived
15 directly or indirectly by the City or the Hotel Manager from the operation and use of, or
16 otherwise relating to, the Airport Hotel.

17 (13) "Junior Lien Obligations Fund" means the special and separate
18 account created within the Airport System Fund by Section 301 hereof and designated as
19 the "City and County of Denver, Airport System Junior Lien Obligations Fund."

20 (14) "Senior Hotel CapEx Reserve Fund" means the special and separate
21 subaccount so designed and established in the Airport Hotel Junior Lien Obligations
22 Account by Section 303B hereof.

23 (15) "Senior Hotel FF&E Reserve Fund" means the special and separate
24 subaccount so designated and established in the Airport Hotel Junior Lien Obligations
25 Account by Section 303A hereof.

26 (16) "Subordinate Hotel CapEx Reserve Fund" means the special and
27 separate subaccount so designated and established in the Airport Hotel Junior Lien
28 Obligation Account by Section 303D hereof.

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

1 Management Agreement and the Cash Management Agreement be, and the same hereby is,
2 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 Hotel
6 Revenues, the payment of the Operation and Maintenance Expenses related to the Airport Hotel
7 and payment of other obligations related to the Airport Hotel be governed by the provisions of
8 this Supplemental Ordinance. This repealer shall not be construed to revive any ordinance,
9 resolution, bylaw, order, or other instrument, or part thereof, heretofore repealed.

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

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

17 Section 107. Delegated Powers. The Mayor, Auditor, Clerk, Chief Financial Officer,
18 Manager and other officers and employees of the City are hereby authorized and directed to
19 take all action necessary or appropriate to effect the provisions of this Supplemental Ordinance,
20 [including, without limitation, the execution and delivery of the Cash Management Agreement, in
21 substantially the form filed with the Clerk, with such omissions, insertions, endorsements and
22 variations as to any recitals of fact or other provisions as may by the circumstances be required
23 or permitted hereby, by the General Bond Ordinance or by the General Subordinate Bond
24 Ordinance, or be consistent herewith, with the General Bond Ordinance or with the General
25 Subordinate Bond Ordinance.

26 **ARTICLE II**
27 **ADMINISTRATION OF AND ACCOUNTING**
28 **FOR HOTEL REVENUES**

29 Section 201. Creation of Hotel Operating Account. The City hereby establishes a special
30 and separate account within the Revenue Fund to be designated the "City and County of
31 Denver, Colorado, Airport System Hotel Operating Account." The Hotel Operating Account shall

1 be held by the Depository Bank under the terms of the Cash Management Agreement. Amounts
2 on deposit in the Hotel Operating Account shall at all times be deemed to be Gross Revenues of
3 the Airport System to be applied as provided in the General Bond Ordinance, subject, however,
4 to the terms and provisions of the Hotel Management Agreement and the Cash Management
5 Agreement.

6 Section 202. Deposits to Hotel Operating Account. All Hotel Revenues, upon their
7 receipt from time to time by the City or the Hotel Manager, shall be immediately deposited
8 directly to the credit of the Hotel Operating Account. The City shall require the Hotel Manager,
9 pursuant to the terms of the Hotel Management Agreement and the Cash Management
10 Agreement, to deposit Hotel Revenues to the Hotel Operating Account as provided herein.

11 Section 203. Application of Hotel Revenues. Amounts on deposit in the Hotel Operating
12 Account shall be applied, from time to time, in accordance with the terms and provisions of the
13 Hotel Management Agreement and Cash Management Agreement, to pay the Operation and
14 Maintenance Expenses related to the Airport Hotel as more specifically set forth in Section 3.07
15 of the Hotel Management Agreement. Amounts on deposit in the Hotel Operating Account not
16 required to pay such Operation and Maintenance Expenses related to the Airport Hotel shall be
17 transferred by the Depository Bank to the City for deposit to the Revenue Fund on the first
18 business day of each month and as otherwise provided in the Cash Management Agreement.

19 Section 204. Administration and Investment of Hotel Operating Account. Except as
20 otherwise provided in the Cash Management Agreement, the Hotel Operating Account shall
21 otherwise be generally administered in substantially the same manner as provided in Article VI of
22 the General Bond Ordinance. Moneys held from time to time in the Hotel Operating Account
23 shall be held and invested as provided in the Cash Management Agreement. Any interest
24 earned on, or any profit or loss realized from the liquidation of, any investments shall be credited
25 or charged to the Hotel Operating Account as such gain or loss is realized.

26 **ARTICLE III**
27 **JUNIOR LIEN OBLIGATIONS; ADMINISTRATION**
28 **OF FUNDS AND ACCOUNTS**

29 Section 301. Creation of Junior Lien Obligations Fund. In accordance with the General
30 Bond Ordinance and the General Subordinate Bond Ordinance, and in particular Section 705 of
31 the General Subordinate Bond Ordinance, the City hereby establishes a special and separate

1 account in the Airport System Fund to be designated the "City and County of Denver, Colorado,
2 Airport System Junior Lien Obligations Fund." The Junior Lien Obligations Fund shall be under
3 the control of the City and shall be administered as provided herein and generally as provided in
4 Article VI of the General Bond Ordinance.

5 Section 302. Deposits to Junior Lien Obligations Fund. So long as any Junior Lien
6 Obligations remain unpaid, the Gross Revenues of the Airport System, upon their receipt from
7 time to time by the City, shall continue to be set aside and immediately deposited to the credit of
8 the Revenue Fund; and so long as an Junior Lien Obligations remain unpaid, the Revenue Fund
9 shall be administered, and the moneys on deposit therein shall be applied in the order of priority,
10 as provided in the General Bond Ordinance and the General Subordinate Bond Ordinance.

11 From any moneys remaining in the Revenue Fund, after making all payments required by
12 Sections 507 through 512 of the General Bond Ordinance, there shall be credited by the City not
13 less frequently than monthly to the Junior Lien Obligations Fund such amounts as may be
14 required to pay Junior Lien Obligations, including required reserves therefor, as provided by any
15 Supplemental Ordinance, instrument or agreement.

16 Section 303. Creation of Accounts and Subaccounts. The City hereby establishes and
17 creates within the Junior Lien Obligations Fund a special and separate account to be designated
18 the "City and County of Denver, Airport Hotel Junior Lien Obligations Account" which account
19 shall be under the control of the City.

20 The City hereby establishes and creates within the Airport Hotel Junior Lien Obligations
21 Account the following special and separate subaccounts, which subaccounts shall be under the
22 control of the City:

- 23 A. The "Senior Hotel FF&E Reserve Fund," a subaccount within the Airport Hotel
24 Junior Lien Obligations Account;
- 25 B. The ""Senior Hotel CapEx Reserve Fund," a subaccount within the Airport Hotel
26 Junior Lien Obligations Account;
- 27 C. The "Hotel Operating Reserve Fund," a subaccount within the Airport Hotel Junior
28 Lien Obligations Account; and
- 29 D. The "Subordinate Hotel CapEx Reserve Fund," a subaccount within the Airport
30 Hotel Junior Lien Obligations Account;

1 Section 304. Administration of Airport Hotel Junior Lien Obligations Account. The
2 obligations under Section 3.10 of the Hotel Management Agreement to make payments,
3 transfers and deposits shall constitute Junior Lien Obligations for purposes of the General Bond
4 Ordinance and the General Subordinate Bond Ordinance. Such payments shall be made prior
5 to any payments pursuant to Sections 513 through 516 of the General Bond Ordinance. [On the
6 first day of each month,] from amounts credited to the Junior Lien Obligations Fund, the City
7 shall credit to the Airport Hotel Junior Lien Obligations Account (i) the amount of Available
8 Revenues for the current period in the Revenue Fund and (ii) such other amounts in the
9 Revenue Fund, up to the amount of any Cumulative Excess Revenues, to the extent such other
10 amounts are required to satisfy the obligations under Section 3.10 of the Hotel Management
11 Agreement. The amounts so credited shall be applied to the payments, transfers and deposits
12 required under Section 3.10 of the Hotel Management Agreement, in the order of priority and in
13 the amounts set forth in Section 3.10 of the Hotel Management Agreement; provided that the
14 requirement of each priority set forth therein are to be fully satisfied, leaving no deficiencies, prior
15 to any deposit, transfer or payment later in priority. Any moneys on deposit in the Airport Hotel
16 Junior Lien Obligations Account and not required to be held or applied as provided in this
17 Section 304 shall be transferred to the applicable accounts and subaccounts of the Bond Fund
18 as directed by the Treasurer and may be used for any one or any combination of lawful
19 purposes relating to the Airport System, as the Manager may from time to time determine;
20 provided that such use will not, determined in consultation with Airport bond counsel, adversely
21 affect the tax-exempt status of the interest on any Bonds issued to finance the Hotel or any
22 portion thereof.

23 Section 305. Pledge Securing Junior Lien Obligations. Subject only to the right of the
24 City to pay Operation and Maintenance Expenses of the Airport System and to the obligations
25 of the City in respect of Senior Bonds, other Obligations, Subordinate Bonds and Subordinate
26 Obligations as provided by the General Bond Ordinance and the General Subordinate Bond
27 Ordinance, the Gross Revenues and all moneys and securities paid or to be paid to, or held or
28 to be held in, the Junior Lien Obligations Fund and any other fund or account created and
29 pledged for such purpose herein are hereby irrevocably pledged to secure the payment of the
30 Junior Lien Obligations as provided herein. This pledge shall be valid and binding from and
31 after the date on which any such Junior Lien Obligations are incurred; and the moneys, as

1 received and hereby pledged, shall immediately be subject to the lien of this pledge without
2 any physical delivery, filing or further act. The lien of this pledge and the contractual
3 obligations hereby made shall have priority over any or all other liabilities and obligations of
4 the City, and the lien of this pledge shall be valid and binding against all persons having claims
5 of any kind in tort, contract or otherwise against the City (except as herein otherwise provided)
6 whether or not such persons have notice thereof.

1 COMMITTEE APPROVAL DATE: October 22, 2015

2 MAYOR-COUNCIL DATE: October 27, 2015

3 PASSED BY THE COUNCIL _____ 2015

4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____ 2015

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

9 NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2015 AND _____ 2015

10 PREPARED BY: HOGAN LOVELLS US LLP and BOOKHARDT & O'TOOLE; DATE: _____, 2015

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 D. Scott Martinez, City Attorney

16 BY: _____, _____ City Attorney

17 DATE: _____