

1 **BY AUTHORITY**

2 **ORDINANCE NO. _____**
3 **SERIES OF 2013**

COUNCIL BILL NO. CB13-0573
COMMITTEE OF REFERENCE:
Government & Finance

5 **A BILL**

6 **For an ordinance authorizing the exercise of a purchase option under an**
7 **existing lease purchase agreement, the approval and execution of an**
8 **annually renewable Lease Purchase Agreement No. 2013A (Buell Theatre**
9 **Property) between the Denver Public Facilities Leasing Trust 2013A, as**
10 **lessor, and the City and County of Denver, as lessee, the execution of other**
11 **documents related thereto; authorizing officials of the City and County of**
12 **Denver to take all action necessary to carry out the transactions**
13 **contemplated hereby; ratifying action previously taken and providing other**
14 **matters relating thereto.**

15 WHEREAS, the City and County of Denver, Colorado (the "City"), is a municipal
16 corporation duly organized and existing as a home-rule city under Article XX of the Colorado
17 Constitution and under the Charter of the City (references to provisions therein being to the
18 1960 Compilation, as amended), and is a political subdivision of the State of Colorado (the
19 "State"); and

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

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

29 WHEREAS, the City, as lessee, has heretofore entered into Lease Purchase Agreement
30 No. 2003B (Buell Theatre/Jail Dorm Bldg. 20 Properties) dated as of May 1, 2003 (the "2003B
31 Lease"), between Denver Public Facilities Leasing Trust 2003B, as lessor, and the City, as
32 lessee, on file in Clerk's Filing No. 03-323; and

1 WHEREAS, the City was granted an option to purchase the “Jail Dorm Bldg. 20 Property”
2 (as defined under the 2003B Lease), constituting a “Component” of the “Leased Property” (each
3 as defined under the 2003B Lease), pursuant to the terms and conditions stated in the 2003B
4 Lease (the “2003B Jail Dorm Bldg. 20 Property Purchase Option”); and

5 WHEREAS, the other Component of the Leased Property under the 2003B Lease is
6 defined as the “Buell Theatre Property,” which Buell Theatre Property is owned by the 2003B
7 Trust (as hereinafter defined); and

8 WHEREAS, pursuant to that certain Declaration and Indenture of Trust dated as of May
9 1, 2003 (the “2003B Indenture”), between Capital Asset Finance Corporation, as settlor, and
10 Zions First National Bank (the “2003B Trustee”), on file in Clerk’s Filing No. 03-323-A, the
11 2003B Trustee

12 (1) created a trust denominated the “Denver Public Facilities Leasing Trust
13 2003B” (the “2003B Trust”), and

14 (2) executed and delivered a series of Certificates of Participation denominated
15 as “Certificates of Participation, Series 2003B (Buell Theatre/Jail Dorm Bldg. 20
16 Properties)” (the “2003B Certificates”) evidencing proportionate interests in the base
17 rentals and other revenues under the 2003B Lease; and

18 WHEREAS, Zions First National Bank is referred to herein as the “Trustee” in its capacity
19 as Trustee of the Trust (as hereinafter defined) and in respect of the 2013A Certificates (as
20 hereinafter defined) and (2) pursuant to the 2013A Indenture (as hereinafter defined), the name
21 of the 2003B Trust is to be changed to the “Denver Public Facilities Leasing Trust 2013A” and is
22 referred to herein as the “Trust”; and

23 WHEREAS (1), it is economically advantageous at this time to effect a refunding
24 transaction in respect of the 2003B Lease, the 2003B Indenture and the 2003B Certificates by
25 providing for the restructuring of the Base Rentals due under the 2003B Lease and other
26 amendments to the 2003B Lease in order to accomplish such refunding transaction, and (2) it is
27 necessary that the 2003B Lease be amended and restated; and

1 WHEREAS, there have been filed on September 11, 2013, in the office of the Clerk the
2 substantially final forms of the following:

3 (1) Lease Purchase Agreement No. 2013A (Buell Theatre Property) (Amends
4 and Restates 2003B Lease), including Exhibits A through D thereto to be dated its date of
5 execution and delivery (the "2013A Lease"), in Clerk's Filing No. 2013-0921-A, between
6 the 2013A Trust, as lessor, and the City, as lessee, amending and restating in its entirety
7 the 2003B Lease; and

8 (2) Declaration and Indenture of Trust (Buell Theatre) to be dated its date of
9 execution and delivery (the "2013A Indenture"), in Clerk's Filing No. 2013-0921-B,
10 entered into by Zions First National Bank, Denver, Colorado, as trustee (the "Trustee"),
11 amending and restating in its entirety the 2003B Indenture, under which Refunding
12 Certificates of Participation, Series 2013A (Buell Theatre Property) (the "2013A
13 Certificates"), in the aggregate maximum principal amount of \$39,180,000 evidencing
14 proportionate interests in the Trust's rights to receive certain revenues, including Base
15 Rentals, under the 2013A Lease, are to be executed and delivered by the Trustee; and

16 (3) Preliminary Official Statement, including a form of Notice of Sale, in Clerk's
17 Filing No. 2013-0921-C (the "Preliminary Official Statement"), relating to the 2013A
18 Lease, which shall also constitute the form of a related final Official Statement (the
19 "Official Statement"); and

20 WHEREAS, the City has determined that it is convenient and in the best interests of the
21 City that the City (a) exercise its 2003B Jail Dorm Bldg. 20 Property Purchase Option and (b)
22 enter into the 2013A Lease in order to effect the refunding transaction and continue to lease the
23 Buell Theatre Property (the "2013A Leased Property") from the Trust, for use by the City; and

24 WHEREAS, the 2013A Certificates are to be sold pursuant to the 2013A Indenture and
25 the Preliminary Official Statement.

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

27 **Section 1. *Ratification of Actions.*** All action heretofore taken, not inconsistent with
28 the provisions of this ordinance, by the City or its officers, directed toward the exercise of the
29 City's 2003B Jail Dorm Bldg. 20 Property Purchase Option and, in order to effect the refunding

1 transaction, the continuation of the leasing by the City from the Trust of the Buell Theatre
2 Property pursuant to the 2013A Lease is hereby ratified, approved and confirmed.

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

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

11 (1) the exercise of the 2003B Jail Dorm Bldg. 20 Property Purchase Option;
12 and

13 (2) effecting the refunding transaction and continuing the leasing of the Buell
14 Theatre Property pursuant to the terms and provisions of the 2013A Lease.

15 The Council hereby authorizes (1) the exercise of the City's 2003B Jail Dorm Bldg. 20
16 Property Purchase Option and (2) the leasing of the Buell Theatre Property from the Trust under
17 and pursuant to the terms and provisions of the 2013A Lease.

18 **Section 3. Approvals; Execution of Documents; Authorized Officers.** The 2013A
19 Lease in substantially the form as filed in Clerk's Filing No. 2013-0921-A, is in all respects
20 approved. The Mayor is hereby authorized and directed to execute and deliver, and the Clerk is
21 hereby authorized and directed to affix the seal of the City to, and attest, the 2013A Lease, in
22 substantially the form as filed with the Clerk in Clerk's Filing No. 2013-0921-A.

23 **Section 4. No General Obligation or Other Indebtedness.** The obligation of the City
24 to make rental payments under the 2013A Lease is subject to annual appropriation by the
25 Council and constitutes an undertaking of the City to make current expenditures. No provision
26 of this ordinance, the 2013A Lease, the 2013A Indenture or the Series 2013A Certificates shall
27 be construed as constituting or giving rise to a general obligation or other indebtedness or a
28 multiple fiscal year direct or indirect debt or other financial obligation of the City within the
29 meaning of any home rule, constitutional or statutory debt limitation nor a mandatory charge or

1 requirement against the City in any ensuing fiscal year beyond the current fiscal year. The City
2 may choose to not renew, and thereby terminate its obligations under the 2013A Lease on an
3 annual basis.

4 **Section 5. Reasonable Rentals.** The Council hereby determines and declares that
5 the Base Rentals due under the 2013A Lease do not exceed a reasonable amount so as to
6 place the City under an economic compulsion to renew and therefore not to terminate the 2013A
7 Lease or to exercise its option to purchase the ownership interest of the Trust in the Buell
8 Theatre Property, pursuant to the 2013A Lease.

9 **Section 6. Consent to Sale of 2013A Certificates.** The Council hereby
10 acknowledges and consents to (1) the 2013A Indenture, (2) the execution and delivery by the
11 Trustee of, the form of, and sale of, the 2013A Certificates, all pursuant to the 2013A Indenture,
12 in substantially the form of the 2013A Indenture filed with the Clerk in Clerk's Filing No. 2013-
13 0921-B, and (3) the distribution of the Preliminary Official Statement, in substantially the form
14 filed with the Clerk in Clerk's Filing No. 2013-0921-C, and the Official Statement to prospective
15 purchasers and the purchasers of the 2013A Certificates.

16 The information with respect to the City contained in the Official Statement is approved
17 and authorized. The distribution of the information contained in the Official Statement with
18 respect to the City is hereby approved. The Manager of Finance is authorized to execute a
19 "deemed final" certificate in respect of the Preliminary Official Statement for the purpose of Rule
20 15c2-12 under the Securities and Exchange Act of 1934 and enter into the Continuing
21 Disclosure Undertaking, the form of which is attached as Appendix E to the Preliminary Official
22 Statement.

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

1 (1) the execution and delivery by the Manager of Finance of a supplement to
2 the Base Rentals Schedule (Exhibit C) of the 2013A Lease prior to the recording of the
3 2013A Lease in the real estate records, such supplement to evidence the actual Base
4 Rentals due under Lease Purchase Agreement No. 2013A (Buell Theatre Property),
5 within the limitations set forth on the Base Rentals Schedule in the form of the 2013A
6 Lease filed with the Clerk in Clerk's Filing No. 2013-0921-A, and

7 (2) the determination by the Manager of Finance of the dated date (which shall
8 be the delivery date) of the 2013A Lease, and

9 (3) the execution and delivery of such certificates and opinions as may be
10 reasonably required by the City's counsel, the Trustee or the underwriter selected for the
11 sale of the 2013A Certificates or relating to, among other things, the tenure and identity of
12 the officials of the City and the Council, the absence of pending litigation affecting the
13 validity of the 2013A Lease, federal and state securities laws, and expectations and
14 covenants relating to the excludability from gross income for federal income tax purposes
15 of the portion of Base Rentals under and as defined in the 2013A Lease designated in
16 the 2013A Lease and paid as interest under the 2013A Lease, all as contemplated by this
17 ordinance and are not inconsistent with this ordinance.

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

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

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

1 **Section 11. *Recordation and Authentication.*** The ordinance shall be recorded after
2 its 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 COMMITTEE APPROVAL DATE: CONSENT AGENDA DATED AUGUST 29, 2013
5 MAYOR-COUNCIL DATE: SEPTEMBER 3, 2013
6 PASSED BY THE COUNCIL _____, 2013
7 _____ - PRESIDENT
8 APPROVED: _____ - MAYOR _____, 2013
9 ATTEST: _____ - CLERK AND RECORDER,
10 EX- OFFICIO CLERK OF THE
11 CITY AND COUNTY OF DENVER
12
13 PUBLISHED IN THE DAILY JOURNAL _____, 2013 AND _____, 2013
14 PREPARED BY: PECK, SHAFFER & WILLIAMS LLP and KLINE ALVARADO VEIO, PC;
15 DATE: September 11, 2013

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

20 Douglas J. Friednash, City Attorney
21 BY: _____, _____ City Attorney
22 DATE: _____