

FIRST AMENDATORY AGREEMENT

THIS FIRST AMENDATORY AGREEMENT (this “Amendatory Agreement”) is made and entered by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (the “City”), and **Service America Corporation, d/b/a Centerplate**, a Delaware corporation licensed and authorized to do business in the State of Colorado, whose address is One Landmark Square, 18th Floor, Stamford, CT 06901 (the “Concessionaire”).

BACKGROUND:

WHEREAS, the City and Concessionaire entered into that certain Agreement, dated June 25, 2019 (the “Agreement”), by which Concessionaire agreed to provide food, alcoholic and non-alcoholic beverages, and retail service, including concession and banquet and catering services; and

WHEREAS, the City declared a state of local disaster emergency on March 12, 2020 pursuant to C.R.S. 24-33.5-701, *et seq.*, brought on by the spread of COVID-19, the Governor of the State of Colorado declared a Disaster Emergency (D 2020 003) dated March 11, 2020 on the same basis, and the President of the United States issued a Declaration of Emergency on March 13, 2020 due to the COVID-19 crisis; and

WHEREAS, the parties expressly acknowledge that state and local health and safety restrictions affecting the facilities described in the Agreement are on-going to promote public safety in connection with use of City venues; and

WHEREAS, Concessionaire shall seek to minimize expenses incurred related to the Agreement during the duration of the health and safety restrictions period (as hereinafter defined); and

WHEREAS, the City and Concessionaire benefit by amending the Agreement as it will provide clarity concerning the parties’ respective responsibilities; enable all parties to control costs pursuant to the Agreement; and ensure continuity of services by Concessionaire pursuant to the Agreement upon the conclusion of the health and safety restrictions period.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained in the Agreement and herein contained the parties agree as follows:

1. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Agreement.
2. In response to the COVID-19 crisis in the City and County of Denver, Colorado, the City and Concessionaire hereby agree to modify the Agreement to account for the temporary closure, reduction in activities, and safety restrictions at City venues

beginning on March 12, 2020, and continuing through and beyond the date of this First Amendatory Agreement, as well as any extension(s) or reinstatement(s) thereof, and any other Federal, State, or local limitations on mass gatherings that render use of City venues implicated by the Agreement commercially impractical (“Health and Safety Restrictions Period”).

3. Section 1 shall be amended as follows:

“2029” shall be deleted in the ‘Term’ definition and be replaced with “2030”.

“January 1, 2029-June 30, 2029 (“**Contract Year 10**”)” shall be deleted in the ‘Cand replaced with “January 1, 2029-December 31, 2029 (“**Contract Year 10**”) January 1, 2030-June 30, 2030 (“**Contract Year 11**”)”.

4. The following language shall be added as a new subsection 4(G):

“**G. HEALTH AND SAFETY RESTRICTIONS PERIOD EXPENSES:** Due to the Health and Safety Restrictions Period as defined in the First Amendatory Agreement, City and Concessionaire agree as follows: Concessionaire shall manage expenses for the duration of the Health and Safety Restrictions Period to ensure costs are incurred in accordance with **Exhibit E**. If necessary expenses during the Health and Safety Restrictions Period are identified and mutually-agreed upon by City and Concessionaire for a specific event or activity or that are otherwise not described in **Exhibit E**, such services shall be of the same kind as described in Exhibit E and such costs may be approved in advance writing by the Director or her designee and be reimbursed to Concessionaire by the City. The Parties hereby agree that if Director or her designee approves, Concessionaire may pay for such costs using available funds from the Reserve Fund and/or the CCC Business Incentive Fund. Should Concessionaire incur costs during the Health and Safety Restrictions Period that are not described in **Exhibit E**, or approved in advance writing by the Director or her designee, notwithstanding anything in this Agreement to the contrary, such amounts shall not be the responsibility of the City pursuant to this Agreement and shall not be reimbursable during or subsequent to the Health and Safety Restrictions Period. Nothing in this Section shall be construed to diminish Concessionaire’s obligations to City in accordance with this Agreement during the Health and Safety Restrictions Period. The Parties hereby agree that during the Health and Safety Restriction Period, Concessionaire’s obligation to contribute, set aside and deposit into the CCC Business Incentive Fund and the Reserve Fund shall not apply.”

5. The following language shall be added as a new subsection 4(H):

“H. The Parties hereby agree that the Concessionaire’s obligation to provide the Minimum Guaranteed Payment shall be inapplicable beginning on the first day of the Health and Safety Restrictions Period. Notwithstanding anything to the contrary, the Parties further agree that Concessionaire’s Minimum Guaranteed Payment obligation shall recommence on a pro-rated basis beginning on the first day of the calendar month following three (3) consecutive months, after the Activation Date, during which Concessionaire’s aggregate Gross Receipts at the Facilities exceed Three Million Dollars (\$3,000,000). For the avoidance of doubt, once the Minimum Guaranteed Payment is reinstated during any Contract Year, it shall apply thereafter. By way of example, should Concessionaire’s Gross Receipts in April, May and June of 2021 exceed Three Million Dollars (\$3,000,000) in the aggregate, and also provided for a rolling 6 month period, Concessionaire’s Gross Receipts at the Facilities exceed Six Million Dollars (\$6,000,000) in the corresponding Contract Year, Concessionaire will be responsible for 50% of the Minimum Guaranteed Payment in 2021 (6/12 months). Additionally, Concessionaire shall be further relieved of its obligation to contribute to the Marketing Fund beginning with its July 1, 2020 payment, until the first payment otherwise due and owing following the Activation Date.

The City shall also be relieved of its obligation to contribute to the Marketing Fund in 2020, and shall resume future Marketing Fund contributions according to the terms of the Agreement following the Activation Date.”

6. Section 18(E) shall be amended by addition of the following:

“Notwithstanding the foregoing, beginning on March 12, 2020, and continuing until the Activation Date (the “Recovery Period”) none of the Additional Expenditures will be amortized. Beginning on the Activation Date, Concessionaire shall amortize all amounts that would have been amortized during the Recovery Period on a straight-line basis over the remaining balance of the Term.”

7. This First Amendment is intended to preserve the parties’ rights and obligations for resumption of activities after the Health and Safety Restrictions Period and to promote continuity of services at the conclusion of the Health and Safety Restrictions Period. To effect such intent, a new section 31(E) shall be added to the Agreement as follows:

“E. Notwithstanding anything contained in Section 31 or this Agreement to the contrary, the Concessionaire agrees not to seek to terminate the Agreement in connection with the Health and Safety Restrictions Period.”

8. Section 31(D) shall be amended by addition of the following after the first sentence: “Notwithstanding the foregoing, the terms of this subsection 31(D) shall not apply in connection with the Health and Safety Restrictions Period.”

9. An additional paragraph shall be added to Section 37 of the Agreement as follows:

“City shall notify Concessionaire at least 30 days prior to the conclusion of the Health and Safety Restrictions Period (“Reopening Notice”). The Reopening Notice shall be sent by electronic mail message to Todd.Moore@centerplate.com, with a copy to Mathew.Watt@sodexo.com, or overnight mail to Concessionaire and shall be deemed effective when sent by City.”

10. A new section 59 shall be added to the Agreement as follows:

“59 Cessation of the Health and Safety Restrictions Period and Resumption of Activities

Upon Submission of the Reopening Notice, Concessionaire shall undertake all actions necessary to resume providing all services required by the Agreement on the day after the date identified by City as the expiration date of the Health and Safety Restrictions Period (“Activation Date”). Should Concessionaire fail to provide requested services on and after the Activation Date, Concessionaire shall be in breach of this Agreement.”

11. **Exhibit L** shall be amended by deletion of numbered paragraphs 5 and 7 which shall be replaced with the following language:

“5. On or before ninety (90) days after the Activation Date, in order to enhance the retail food and beverage program at the Colorado Convention Center, Concessionaire shall complete a renovation of the Dazbog Coffee at the Blue Bear Café and a complete transformation of the Little Blue Bear A Concession location into the Mile High market grab and go concept.

7. On or before one hundred and twenty (120) days after the Activation Date, in order to enhance the offerings and look and feel of the Exhibit Hall Concession locations at the Colorado Convention Center, Concessionaire shall complete a renovation of the Exhibit Hall Concessions. The renovation will consist of converting select locations into self-order grab and marketplaces and select locations into catering pantry spaces.”

12. The Parties entered into a temporary agreement for Concessionaire to provide certain food and beverage services at the Colorado Convention Center on April 16, 2020 (“COVID Contract”). This Agreement shall not be affected in any manner by Concessionaire’s provision of services pursuant to the COVID Contract.

13. Concessionaire consents to the use of electronic signatures by the City. This First Amendatory Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The

Parties agree not to deny the legal effect or enforceability of this First Amendatory Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this First Amendatory Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the basis that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

14. The Parties agree that this First Amendatory Agreement shall be deemed effective as of November 1, 2020.

15. Except as herein amended, the Agreement is affirmed and ratified in each and every particular.

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Contract Control Number:
201950097-01

THTRS-202056838-01 ALFRESCO # THTRS-

Contractor Name:

SERVICE AMERICA CORPORATION

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at
Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
201950097-01
Contractor Name:

THTRS-202056838-01 ALFRESCO # THTRS-
SERVICE AMERICA CORPORATION

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Contract Control Number:
201950097-01

THTRS-202056838-01 ALFRESCO # THTRS-

Contractor Name:

SERVICE AMERICA CORPORATION

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at
Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
201950097-01
Contractor Name:

THTRS-202056838-01 ALFRESCO # THTRS-
SERVICE AMERICA CORPORATION

By: _____

Name: Hadi Monavar
(please print)

Title: EVP & CFO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)