

## FIRST AMENDMENT AND RENEWAL TO LEASE AGREEMENT

**THIS FIRST AMENDMENT AND RENEWAL TO LEASE AGREEMENT** is made by and between the **CITY AND COUNTY OF DENVER** (“City”), a municipal corporation and home rule city of the State of Colorado, and **SERVICE AMERICA CORPORATION, d/b/a CENTERPLATE**, a Delaware corporation, whose address is 1315 Curtis Street, Denver, Colorado 80202 (“Lessee”). The City and Lessee shall each be referred to as a “Party” and collectively as the “Parties.”

### RECITALS:

**A.** The City is the owner of the Denver Performing Arts Complex (“DPAC”), including but not limited to Space number 2 at 1315 Curtis Street, Denver, Colorado; and

**B.** The Lessee entered into a Lease Agreement dated January 20, 2017 to lease a portion of the Property, approximately 7,681 square feet, Space number 2, from the City for use as a restaurant (“Lease”); and

**C.** The City now desires to amend the Lease to extend the term, increase the total contract amount and add liquor liability insurance.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and obligations herein set forth the parties agree as follows:

1. Section 3 of the Lease Agreement entitled “**TERM**” is amended to read as follows:

“**3. TERM:** The term of this Lease shall begin on July 1, 2016 (the “Delivery Date”) and shall terminate on June 30, 2019 (the “Term”). Lessee may terminate the Lease with sixty (60) days written notice to the City, with or without cause, and the City may terminate the Lease with sixty (60) days written notice to Lessee, with or without cause.”

2. Section 4 of the Lease Agreement entitled “**RENT**” is amended to read as follows:

“**4. RENT:** Rent shall be paid by Lessee monthly to the City on the first business day of each month, or to another party as otherwise specified by the City to receive Rents on its behalf. Should the City specify another party to receive Rents, Lessee will be given written notice of such change no less than seven (7) days prior to the next succeeding Rent due date so that Lessee is allowed time sufficient to deliver Rents on or before the due date. Rent payable monthly by Lessee shall be Monthly Base Rent PLUS Monthly Percentage of Beverage Sales.

**Monthly Base Rent \$3,000.00**

**Total Contract Amount \$108,000.00 (not including Monthly Percentage of Beverage Sales or any extensions).**

“Monthly Base Rent” means \$3,000.00. “Monthly Percentage of Beverage Sales” means ten percent (10%) of all sales of alcohol beverages as set forth on the Monthly Report (as defined below) for the immediately preceding Accounting Period. “Accounting Period” means a calendar month. On or before the close of business on the fifteenth (15th) business day after the end of each Accounting Period, Lessee shall generate and remit to the City, through the Director, a report of Lessee’s alcohol beverage sales at the Leased Premises for the Accounting Period (the “Monthly Report”). The Monthly Report shall be signed by an authorized representative of Lessee. Rent paid shall be reconciled, and any difference between the Rent paid and the actual amount of Rent due shall be paid by or refunded to Lessee, as appropriate.

If the Lease prematurely terminates pursuant to Section 3 above, then the monthly base rent shall be due only through the termination date (i.e. the “Total Contract Amount” listed above shall not be due in full). If this Lease expires on a date that is not the last day of the month then the rent shall be pro-rated accordingly.

In addition to the foregoing, at such time that the City Assessor assesses a Possessory Interest or other related tax to the Leased Premises, Lessee shall pay before delinquency any and all taxes, assessments, and other charges levied, assessed or imposed, and which become payable during the Term, upon Lessee's operations, occupancy, or conduct of business at the Leased Premises, resulting from Lessee's occupation or subletting of the Leased Premises, or upon Lessee's equipment, furniture, appliances, trade fixtures, and other personal property of any kind installed or located on the Leased Premises. Such taxes include any Possessory Interest taxes resulting from this Lease or a sublease of the Leased Premises.”

3. Section 18 of the Lease Agreement entitled “**Lessee’s Insurance**” is amended as follows:

“**18. LESSEE'S INSURANCE:** From the commencement of this Lease, and at all times throughout the term, Lessee (or its Lessee(s)) shall carry and maintain the following insurance policies. Lessee shall keep the required insurance coverage in force at all times during the term of the Lease, or any extension thereof, during any warranty period, and for three (3) years after termination of the Lease. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-”VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice

shall be sent to the parties identified in the Notices section of this Lease. Such notice shall reference the City contract number listed on the signature page of this Lease. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Lessee shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. Lessee shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Lease are the minimum requirements, and these requirements do not lessen or limit the liability of the Lessee. The Lessee shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Lease.

(a) Workers' Compensation/Employer's Liability Insurance: Lessee shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

(b) Property Insurance: Lessee shall provide 100% replacement cost for Lessee's tenant improvements and personal property.

(c) Commercial General Liability: Lessee shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate. Lessee's coverage is to be primary and non-contributory with any coverage or self insurance maintained by the City. The City and County of Denver, its officers, officials and employees shall be included as additional insureds.

(d) Liquor Liability: Lessee shall maintain liquor liability insurance with policy limits of \$1,000,000 per occurrence, and \$2,000,000 policy aggregate. It is acceptable for this insurance to be included in the Commercial General Liability insurance policy.

(e) Waiver of Subrogation: Waiver of Subrogation and Rights of Recovery against the City, its officers, officials and employees for all coverages required.

(f) The certificates evidencing the existence of the above policy or policies, all in such form as the City's Risk Management Office may require, are to be provided to the City upon execution of this Lease. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Lease shall not act as a waiver of Lessee's breach of this Lease or of any of the City's rights or remedies under this Lease. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

(g) Lessee understands and acknowledges that the City does not provide any insurance coverage for any property of the Lessee, its agents, employees or assignees located in the Leased Premises and Lessee acknowledges and agrees

that the Lessee, its agents, employees and assignees have no claim against the City for any damage or loss of personal property and belongings of Lessee, its agents, employees or assignees in the Leased Premises.”

3. Except as otherwise modified or amended herein, all of the terms, provisions and conditions of the Lease are hereby affirmed and ratified in each and every particular as though set out in full herein.

**[SIGNATURE PAGES FOLLOW]**

**Contract Control Number:**

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:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** FINAN-201628965-01

**Contractor Name:** Service America Corporation, d/b/a Centerplate

By: \_\_\_\_\_

Name: HAOI MONSIEUR  
(please print)

Title: EVP & CFO  
(please print)

**ATTEST: [if required]**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

