

## **USE AGREEMENT**

**THIS USE AGREEMENT** (“Agreement”) is made and entered effective as of the date set forth on the City’s signature page, between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **DENVER PALM CORPORATION**, 1672 Lawrence St., Westin Tabor Center, Denver, Colorado 80202 (“User”).

### **RECITALS**

**WHEREAS**, the City is the owner of a certain park known as Skyline Park, a designated City park, located in part along Arapahoe Street, between 15<sup>th</sup> Street and 18<sup>th</sup> Street, which includes a patio and area adjacent to The Palm Restaurant; and

**WHEREAS**, User intends to occupy certain space as a seating area which is within Skyline Park (“Patio”); and

**WHEREAS**, User desires a non-exclusive, non-transferable and revocable access for use of the space; and

**WHEREAS**, the Executive Director of the City’s Department of Parks and Recreation (the “Director”) finds and determines this an appropriate use of the patio space adjacent to Skyline Park;

**NOW, THEREFORE**, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

**1. USE OF SPACE**: The City does hereby authorize the User to use the Patio as a seating area including tables, chairs, umbrellas, railings, awnings, planters, lights and other facilities particular to operation of a restaurant and related activities for outdoor consumption of food and beverages, subject to the terms and conditions of this Agreement. The Patio shall consist of no more than an area of land within Skyline Park (Block 76, East Denver, Denver, Colorado) not to exceed 944 square feet (8 feet by 118 feet) as located and described in **Exhibit A** attached hereto. Any planters, barriers, railings or trellises must be situated within the 8 foot by 118 foot boundary. The terms of this Agreement shall not affect, and User shall make no changes, alterations or modifications to the current configuration of planter barriers, railings or trellises in, on, around or adjacent to the Patio. Nothing in this Agreement is intended, nor shall it be construed, to create or grant a lease or other property interest in the Patio or any part of Skyline Park. Furthermore, nothing in this Agreement grants a concession license under section 2.4.4(C) of the City Charter. The use of the Patio is strictly contingent upon the User’s concurrent occupancy of The Palm Restaurant. The User agrees not to use the Patio, or permit the use of

the Patio, for any purpose prohibited by or contrary to the laws of the United States, the State of Colorado, the City's Charter or ordinances, or the rules and regulations of the Department of Parks and Recreation (the "Department"). The User shall not use the Patio, or permit the use of the Patio, in any manner that results in waste of or damage to the Patio or surrounding City-owned land or property, or that causes a nuisance to the same.

2. **DURATION**: The term of the Agreement is from November 1, 2017 through November 1, 2018, subject to termination as provided in paragraph 7.

3. **OBLIGATIONS OF USER**:

A. **In General**: In consideration of the City authorizing the use of the Patio, the User agrees, and hereby obligates itself, to pay compensation to the City, and to maintain and protect from damage the Patio and adjacent park property, land and facilities as set forth in this Agreement.

B. **Improvements**: No improvements to the Patio or the surrounding or adjacent area shall be undertaken by User unless by license, contract or other binding agreement duly executed by the City and User and setting out the terms and conditions therefor. Any improvements shall be limited, regulated, governed and controlled by such requirements, restrictions and provisions under such contract or other agreement as well as the laws of the State of Colorado, the City Charter, and the Denver Revised Municipal Code as conditions to the Director's approval and all applicable laws. Improvements and fixtures currently installed at and on the Patio shall remain the personal property of the User. All improvements, including permanently attached fixtures, to the Patio installed after execution of this Agreement shall be the property of the City, unless agreed or provided for otherwise, and shall not be removed or replaced without the prior written approval by the Director.

1) Any railings or barriers must continue to be located on or within the boundaries of the site, shall not cause damage to surfaces owned by the City, and shall be arranged so as to satisfy any licensing requirements for the service of alcohol beverages.

2) All furniture, equipment, and other facilities located in the Site shall be maintained, repaired, or replaced as needed to ensure proper function, safety, and appearance and shall be contained within the Site.

3) No signs may be placed on or near the railings or barriers at any time, including menus, signs for special promotions, or any sort of product advertising.

4) All snow in the Concession Site shall be timely removed and shall

not be placed in Skyline Park, except in areas designated by the Director.

5) Public utility requirements associated with the food and beverage service in the Site must be provided from the restaurant.

**C. Operation:** The User agrees that the Patio shall be open to the general public in accordance with User's policies and hours of operation, including the requirement that members of the public using the Patio are restaurant customers. A clear and unobstructed minimum as depicted in Exhibit A width of 5 feet along the Patio boundary must be maintained for public access. The railings shall be located within the boundaries of the Patio in a manner to maintain the 5-foot minimum.

**D. Service of Alcohol:** Subject to the terms and conditions of this Agreement, the User shall have the right to engage in the service, sale, and consumption of beer, wine, and hard liquor ("Permitted Alcohol") in or on the Patio. Otherwise, the sale and service of alcohol beverages of any kind on any other City property is strictly prohibited. The right of the User to engage in the service and sale of Permitted Alcohol to the public in or on the Patio shall be subject to the User obtaining and complying with all relevant licenses, permits and approvals issued in accordance with Applicable Law. The User shall not enter into a separate agreement with any contractor, subcontractor or any individual or entity to sell or serve alcohol in or on the Patio, except with prior express, written permission from the Director. No service or sale of Permitted Alcohol shall be allowed outside of the Patio and no consumption of Permitted Alcohol shall be allowed outside of the Patio. If any other regulation or licensing restriction should further limit the conditions of the sale, service and/or consumption of Permitted Alcohol, the User shall comply with said regulation or licensing restriction.

**E. Maintenance and Repair:** Except as expressly provided in paragraph 4 below, the User agrees that it shall be the User's responsibility to keep and maintain the Patio (including the railings and areas inside the railings) in good physical and safe condition. The User shall provide, at its own expense, for all cleaning and sanitation for the Patio on an as-needed basis. All trash shall be regularly removed and properly disposed of from the Patio and from the area adjacent to the Patio. The Patio and adjacent areas shall also be maintained and free of obstructions and unsafe conditions. The User shall, at its own expense, maintain, repair, or replace damaged, stained or broken tiles, slabs or other portions of concrete, including any cosmetic damage and structural damage on the Patio. Replacements shall be of at least equal quality and functionality as the replaced items were when they were new. The User shall be responsible for any repairs or replacements of such portions, as defined in paragraph 4 below, that are damaged

or broken by the willful or negligent actions of the User or employees, contractors, subcontractors, servants, Users' invitees, customers, visitors, suppliers and agents. Such repairs or replacements shall be performed at the City's direction by the User within a reasonable time period specified in a written notice from the City and in accordance with subparagraph 3.B. above.

**F. City Access & Use:** The User acknowledges and agrees that the City shall have a right of entry on the Patio for any purpose necessary, incidental to or in connection with the City's rights and obligations in the User Agreement, or in the exercise of the City's governmental functions, or for the purpose of making any inspection the City deems necessary for health and safety purposes and for the protection of the City's asset. However, the City will make all reasonable and good faith efforts to notify User of any impending entry and to coordinate such entry so as to minimize any disruption of business and hospitality functions and activities. The User agrees not to take any action to prevent or hinder authorized City employees or agents from entering at any reasonable time, with or without advance notice, upon the Patio for inspection or other valid purposes. Furthermore, the City shall have the right to enter the Patio, with advance notice, to evaluate and plan for future uses.

**4. OBLIGATIONS OF THE CITY:**

**A. The Patio:** Subject to the availability of appropriated funds, the City will maintain (except for cleaning) and repair the physical elements of the Patio and the adjacent area. The City may, at its sole discretion, improve, expand, or replace the Patio, or hold User responsible for its willful or negligent acts or omissions that result in damage to the Patio and the adjacent area. The City reserves the right to retain or hire third parties to perform the City's obligations under this Section 4.

**B. Inspection and Repair:** The City or its contractors and agents shall have the right to enter onto the Patio at all reasonable times to inspect the Patio and/or take such actions as may, in the opinion of the City, be deemed necessary or advisable to perform such work as provided in subparagraphs A and B of this paragraph 4. Except for emergency situations, the City will make every reasonable effort to timely notify the User of any pending work and to coordinate such work so as to minimize any disruption to the User's business and related activities.

**5. COMPENSATION:** User shall pay to the City for use of the Patio the amount of Nine Hundred Forty-Four Dollars (\$944.00) per month. Payment shall be made in advance on a quarterly basis. The quarterly payments shall be tendered by check made out to the Manager of

Finance, and delivered to the Finance and Administration Division, Department of Parks and Recreation, 201 West Colfax, Department 602, Denver, Colorado 80202.

**6. RELATIONSHIP:** It is understood and agreed that the status of the User shall be that of an independent entity contracting for the use of the Patio. It is not intended, nor shall it be construed, that the User or its employees, volunteers, agents, or subcontractors are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever. The User is responsible for the operational management, actions, errors and omissions of the User's employees, volunteers, agents and contractors. Without limiting the foregoing, the User understands and acknowledges that the User and its employees, volunteers, agents and contractors: a) are not entitled to workers' compensation benefits through the City; b) are not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by the User or some other entity besides the City; and c) are obligated to pay federal and state taxes on any monies earned by working for the User. Furthermore, it is understood and agreed that nothing in this Agreement is intended, or shall be construed, to constitute a joint venture or an agency relationship between the parties.

**7. TERMINATION:**

**A. Mutual Rights:** Both the City and the User shall have the unilateral right to terminate this Agreement, without cause, upon thirty (30) calendar days' written notice to the other party. At any time, upon written and mutual consent of the City and the User, the Agreement may be terminated. The Director may unilaterally terminate the Agreement in the event that the Patio or any part thereof is destroyed or substantially damaged as a result of a casualty that renders the Patio wholly or substantially unusable in the opinion of the Director.

**B. Discretionary Termination by the City:** If any one or more of the following events occurs, then the Executive Director of Parks and Recreation or her designated representative (the "Director") may, at the Director's option, immediately terminate this Agreement, with cause, upon written notice to the User:

- 1) The User becomes insolvent, files for bankruptcy, is adjudged bankrupt;
- 2) The User's interests in this Agreement are transferred to or devolve upon, by operation of law or otherwise, any other person, firm, corporation, or other entity by or in connection with any bankruptcy, insolvency, or other proceeding, judicial or administrative;
- 3) The User fails to undertake its obligations under this Agreement

within thirty (30) days of the effective date of this Agreement;

4) The User has made an assignment or transfer of, or subcontracts, its responsibilities and obligations under this Agreement without obtaining the Director's permission; or

5) The User fails to obtain, renew, or maintain the insurance coverage specified in paragraph 10 below or fails to comply with paragraph 14 below.

C. Non-Performance & Cure: In the event the User fails to perform or, improperly performs, any of its responsibilities or obligations under this Agreement ("Non-Performance") and provided the Non-Performance is not a basis for discretionary termination under paragraph 7.B. above, then the following provisions shall be applicable:

1) The Department shall provide the User with a notice of Non-Performance which shall set forth specifically the Non-Performance. The User shall have thirty (30) calendar days from the date of receipt of such notice, except as provided below, within which to correct the Non-Performance. Should the User cure the Non-Performance within the thirty (30) calendar day period, it shall notify the Department in writing of such cure. Notwithstanding the foregoing, the User agrees that it will undertake all good-faith measures to cure the Non- Performance as promptly as commercially practicable. In the event the Non-Performance is not cured within such thirty (30) calendar day period, the Director may, at the Director's option, terminate this Agreement, with cause, by sending written notice of termination, including a date by which the Patio can no longer be used by the User, to the User at the most currently provided address for the User, which notice shall be deemed given when mailed.

2) Notwithstanding the foregoing, if the Non-Performance cannot be cured through the exercise of reasonable diligence within the thirty (30) calendar day period, then such period may be extended by the Director, at the Director's discretion, to a specific date as is reasonable to cure the Non-Performance, provided the User has proceeded and is continuing to proceed in a diligent and reasonable manner to cure, in the opinion of the Director. The User shall, if the Non-Performance cannot be cured within the thirty (30) calendar day time period through the exercise of reasonable diligence, so advise the Director in writing as soon as reasonably possible and include in said writing a detailed listing of what measures the User has undertaken to cure the Non-Performance and the User's best estimate of when and how such Non-Performance will be cured. The City reserves the right

to reject any time extension if, in the opinion of the Director, the User has not proceeded in a diligent and reasonable manner to cure or any further delays in curing the Non-Performance would substantially damage the City's interests under the Agreement. In the alternative, the Director may, as a condition of approving any time extension for cure, specify, within reason, certain actions the User must undertake in order to cure or specify a shorter or longer cure period than that indicated in the User's writing. If a time extension is approved, the User shall advise the Director in writing when and how the cure was accomplished and provide any required documentation of said cure.

**D. Waiver:** In no event shall any action or inaction by the City under this paragraph 7 constitute or be construed to be a waiver by the City of any breach or default which may then exist on the part of the User, and no assent, expressed or implied, to any breach of the Agreement by the User shall be deemed or taken to be a waiver of any other breach.

**8. EXAMINATION OF RECORDS; ANNUAL REPORT:** The User agrees that any duly authorized representative of the City, including the City Auditor, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any books, documents, papers and records of the User, involving transactions related to this Agreement. The User shall provide a description of any improvements, repairs, or replacements, if any, made to the Patio.

**9. REMEDIES & WAIVER:** The parties understand and agree that the rights of specific performance and to punitive or consequential damages have been expressly waived and released by both parties by this paragraph.

**10. INSURANCE:**

**A. General Conditions:** The User agrees and covenants to secure, at its own expense, at or before the time of execution of this Agreement, the following insurance covering all operations, activities, occupancies uses and services associated with the Patio under this Agreement. The User shall keep the required insurance coverage in force at all times during the Term of this Agreement or any extension thereof. 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. The User shall provide written notice of cancellation, non-renewal and any reduction in coverage to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202 by certified mail, return receipt requested. Such written 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 any policy is in excess of a

deductible or self-insured retention, the City must be notified by the User. The User shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the User. The User 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 Agreement.

**B. Proof of Insurance:** The User shall provide a copy of this Agreement to its insurance agent or broker. The User certifies that the certificate of insurance attached as **Exhibit B** complies with all insurance requirements of this Agreement. 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 Agreement shall not act as a waiver of the User's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require, and the User shall promptly provide, additional proof of insurance, including but not limited to policies and endorsements, at any time.

**C. Additional Insureds:** For Commercial General Liability and Business Auto Liability, the User's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

**D. Waiver of Subrogation:** For all coverages required under this Agreement, the User's insurer shall waive subrogation rights against the City.

**E. Subcontractors and Subconsultants of Lessee:** All subcontractors and subconsultants of the User (including independent contractors, suppliers or other entities providing goods or services to the User on the Leased Premises) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the User. The User shall include all such subcontractors and subconsultants as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. The User agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

**F. Workers' Compensation/Employer's Liability Insurance:** The User, an individual, is not required by law to carry worker's compensation or unemployment insurance coverage for himself. With that understanding, the parties recognize and agree that the User is an independent entity who has only contracted for the use of the Patio as provided in this Agreement and is free from control and direction of the City in the pursuit of his occupation. It



is understood and agreed by the parties that the User is not employed by nor works for the City with respect to any of the activities contemplated under this Agreement. The User hereby represents that he has not and will not hire or retain any employees or contract employees to perform work related to the Patio. Should the User hire any employees or contract employees, the User acknowledges and represents that the User shall be solely responsible for providing worker's compensation coverage and unemployment compensation coverage for such employees or contract employees to the extent required by law. In the event that the User should violate the representations made herein, the User shall indemnify and defend the City, as provided in Section 11 of this Agreement, with respect to any workers' compensation claims, unemployment compensation claims, or any other financial liabilities arising from the User's failure to comply with workers' compensation or unemployment compensation laws.

**G. Commercial General Liability:** The User 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.

**H. Liquor Legal Liability.** The User shall maintain, Liquor Legal Liability coverage with limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

**I. Fire and Extended Coverage:** Insurance on all of the User's personal property located on the Patio, if any, in the minimum amount of \$50,000.00.

**J. Additional Provisions:**

(1) For Commercial General Liability, the policy must provide the following:

- (i) That the Agreement is an Insured Contract under the policy;
- (ii) Defense costs are outside the limits of liability;
- (iii) A severability of interests, separation of insureds or cross liability provision; and
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City and County of Denver.

(2) For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

(3) The User shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At the User's

own expense, where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the User shall procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**11. DEFENSE & INDEMNIFICATION:** A. The User hereby agrees to defend, indemnify, and hold harmless the City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of the User or its sub-consultants or subcontractors either passive or active, irrespective of fault, including the City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

B. The User’s duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City regardless of whether an action has been filed in court on the Claim. The User’s duty to defend and indemnify the City shall arise even if the City is the only party sued and/or it is alleged that the City’s negligence or willful misconduct was the sole cause of the alleged damages.

C. The User will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to City and shall not be considered the City’s exclusive remedy.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the User under the terms of this indemnification obligation. The User shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

**12. COLORADO GOVERNMENTAL IMMUNITY ACT:** The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations

(presently \$150,000 per person, \$600,000 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, *et seq.*, C.R.S.

**13. TAXES, CHARGES AND PENALTIES:** The User shall pay all federal, state, and local taxes, late charges and penalties applicable under this Agreement. The City shall not be liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts which the City may be required to pay under D.R.M.C. § 20-107 to § 20-115.

**14. LIENS AND OTHER ENCUMBRANCES:** The User shall not permit any mechanic's or materialman's liens or any other liens to be imposed and remain for more than ninety (90) days upon any City-owned property, or any part thereof, by reason of any worker labor performed or materials furnished by any person or legal entity to or on behalf of the User, either pursuant to C.R.S. § 38-26-107 or by any other authority. The User shall promptly pay when due all bills, debts and obligations incurred in connection with this Agreement and shall not permit the same to become delinquent. The User shall not permit any lien, mortgage, judgment, execution or adjudication of bankruptcy which will in any way impair the rights of the City under this Agreement or to the Patio. The User's obligations set out in this paragraph shall survive the termination of this Agreement.

**15. HAZARDOUS SUBSTANCES:** The User shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the Patio by the User, the User's agents, employees, contractors, or invitees. If Hazardous Substances are used, stored, generated, or disposed of on the Patio, or if the Patio becomes contaminated in any manner due to the actions or inactions of the User, the User shall indemnify and hold harmless the City from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant, and expert fees) arising during or after the Term of the Agreement and arising as a result of those actions or inactions by the User. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if the User causes or permits the presence of any Hazardous Substance on the Patio and that results in contamination, the User shall promptly, at its sole expense, take any and all necessary actions to return the Patio to the condition existing prior to the presence of any such Hazardous Substance on the premises. The User shall first obtain

City's approval for any such remedial action. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Colorado, or the United States Government. "Hazardous Substance" includes any and all material or substances that are defined as "hazardous waste", "hazardous materials", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or local governmental law. "Hazardous Substance" includes but is not restricted to asbestos, asbestos-containing materials, and asbestos-contaminated soils, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and state statute counterparts to these federal statutes, any guidelines issued and rules or regulations promulgated pursuant to federal or state statutes, and any other applicable federal or state statute.

**16. ASSIGNMENT; SUBCONTRACT:** The User covenants and agrees that it will not assign, transfer, or subcontract its rights and obligations hereunder without first obtaining the written consent of the Director. Any attempts by the User to assign, transfer, or subcontract its rights or obligations hereunder without such prior written consent of the Director may, at the option of said Director, terminate this Agreement and all rights of the User hereunder. Such consent may be granted or denied at the sole and absolute discretion of said Director.

**17. NO THIRD-PARTY BENEFICIARY:** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the User, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on this Agreement. It is the express intention of the City and the User that any person other than the City or the User receiving benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**18. NO AUTHORITY TO BIND CITY TO CONTRACTS:** The User has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City, as required by Charter and ordinance.

**19. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** This Agreement is intended as the complete integration of all understandings between the parties. No

prior contemporaneous or subsequent addition, deletion, or other amendment hereto shall have any force or effect, unless embodied herein in writing, and executed in the same manner as this Agreement.

**20. SEVERABILITY:** The parties agree that if any provision of this Agreement or any portion thereof is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected.

**21. CONFLICT OF INTEREST:** The parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the User further agrees not to hire or contract for services any employee or officer of the City which would be in violation of the Denver Revised Municipal Code, Chapter 2, Article IV, Code of Ethics, or Denver City Charter §§ 1.2.8, 1.2.9, and 1.2.12. The User agrees that it will not engage in any transaction, activity or conduct which would result in a conflict of interest under this Agreement. The User represents that he has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the User by placing the User's own interests, or the interests of any party with whom the User has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given the User written notice which describes the conflict. The User shall have eliminated or cured the conflict of interest in a manner which is acceptable to the City within the time and process set forth in paragraph 7.C. above.

**22. NOTICES:** Written notices required or allowed under this Agreement shall be made by certified or registered mail, return receipt requested:

By the User to: Executive Director of Parks and Recreation  
City and County of Denver  
201 West Colfax Avenue, Dept. 601  
Denver, Colorado 80202

By the City to: Denver Palm Corporation  
1672 Lawrence St., Westin Tabor Center  
Denver, Colorado 80202

Changes in notification addresses by either party can be made by written notice.

**23. DISPUTES:** All disputes of whatsoever nature between the City and the User regarding this Agreement shall be resolved by administrative hearings pursuant to the procedure

established by Denver Revised Municipal Code, § 56-106(b), *et seq.* For the purposes of that procedure, the City official rendering a final determination shall be the Director.

**24. GOVERNING LAW; VENUE:** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, and the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted and/or promulgated pursuant thereto, including any amendments. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

**25. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of this Agreement, the User agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, gender identity, gender expression, age, military status, sexual orientation, marital status, or physical or mental disability; and the User further agrees to insert the foregoing provision in all subcontracts hereunder.

**26. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** Except for any and all licenses and permits for the sale and consumption of alcohol related to the conduct of User's business, the User shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring the User from City facilities or participating in City operations. User is required at all times to obtain and maintain all licenses and permits required for the sale and consumption of alcohol as related to the specific business conducted by the User. Failure to maintain such shall be regarded a breach of this Agreement.

**27. OPEN RECORDS:** The parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, 7B C.R.S. (2003), and that in the event of a request to the City for disclosure of such information, the City shall advise the User of such request in order to give the User the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the User agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material

or waive the same. The User further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of the User's intervention to protect and assert its claim of privilege against disclosure under this Article including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

**29. LEGAL AUTHORITY:** The User assures and guarantees that it possesses the legal authority to enter into this Agreement. The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of the User to enter into this Agreement.

**30. NO CONSTRUCTION AGAINST DRAFTING PARTY:** Each of the parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any party merely because this Agreement or any of its provisions, have been prepared by a particular party.

**31. SURVIVAL OF CERTAIN PROVISIONS:** The parties understand and agree that all terms and conditions of this Agreement, together with the exhibits and attachments hereto, which, by reasonable implication, contemplate continued performance or compliance beyond the termination of this Agreement (by expiration of the term or otherwise), shall survive such termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the User's obligations for the provision of insurance and to indemnify the City shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

**32. PARAGRAPH HEADINGS:** The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

**33. CITY EXECUTION OF AGREEMENT:** This Agreement is expressly subject to, and shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.

**34. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** The User consents to the use of electronic signatures by the City. The 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

the 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 the 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 ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**[REMAINDER OF PAGE DELIBERATELY LEFT BLANK.]**



**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:** PARKS-201736804-00

**Contractor Name:** Denver Palm Corporation

By: James Longo

10/26/17

Name: JAMES A LONGO  
(please print)

Title: JAMES A. LONGO CFO EUP  
(please print)

**ATTEST: [if required]**

By: Kirk Drumming

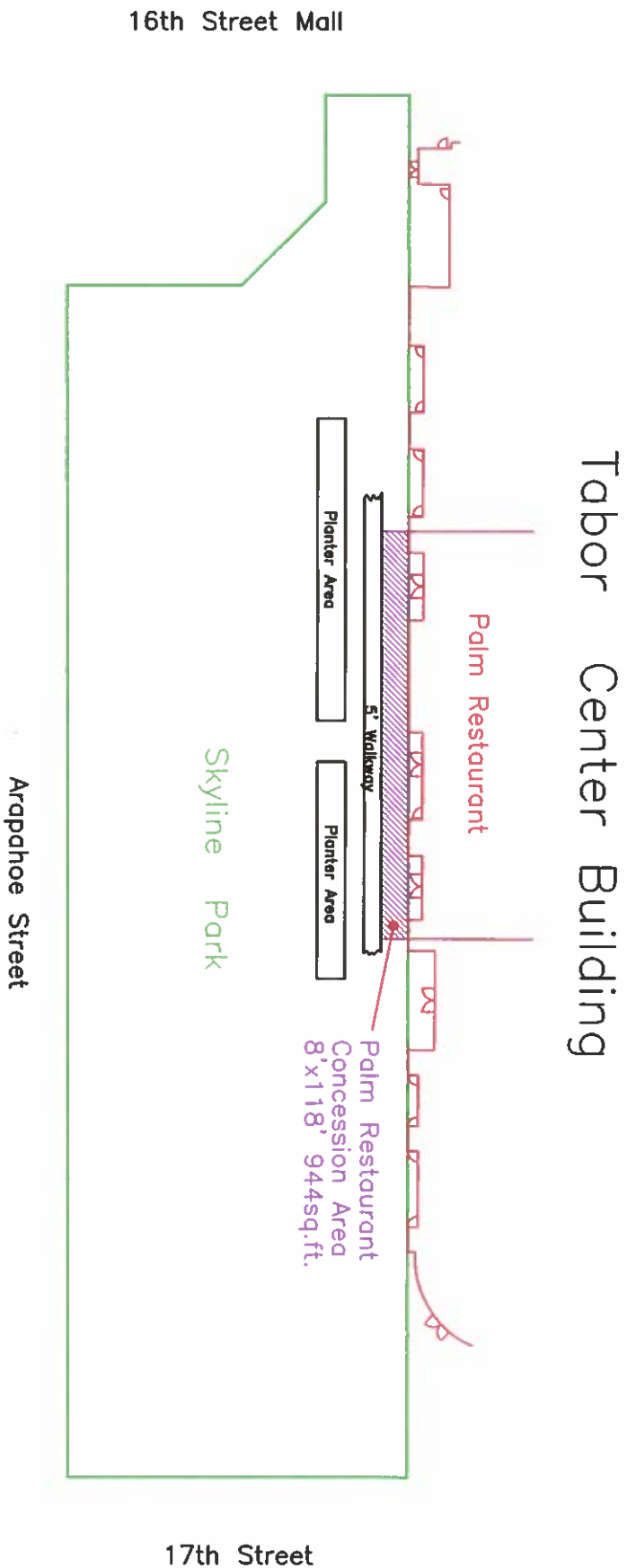
Name: KIRK DRUMMING  
(please print)

Title: SPECIAL PROJECTS MANAGER  
(please print)



# Palm Restaurant Concession

## EXHIBIT A



**DENVER**  
THE MILE HIGH CITY

Date: March 13, 2017  
By: Gregory S. Neitzke PLS



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

08/28/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Willis of Virginia, Inc. c/o 26 Century Blvd P.O. Box 305191 Nashville, TN 37230-5191	<b>CONTACT NAME:</b> <b>PHONE (A/C. No. Ext):</b> 1-877-945-7378		<b>FAX (A/C. No.):</b> 1-888-467-2378
	<b>E-MAIL ADDRESS:</b> certificates@willis.com		
<b>INSURER(S) AFFORDING COVERAGE</b>			<b>NAIC #</b>
<b>INSURER A :</b> Everest National Insurance Company			10120
<b>INSURED</b> Palm Management Corporation et al 1730 Rhode Island Avenue NW Ste 900 Washington, DC 20036			
<b>INSURER B :</b>			
<b>INSURER C :</b>			
<b>INSURER D :</b>			
<b>INSURER E :</b>			
<b>INSURER F :</b>			

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y	Y	RM5GL00003-171	09/01/2017	09/01/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY	N	N	RM5CA00004-171	09/01/2017	09/01/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	Y	Y	XC5EX00237-171	09/01/2017	09/01/2018	EACH OCCURRENCE \$ 25,000,000 AGGREGATE \$ 25,000,000 \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	RM5WC00003-171	09/01/2017	09/01/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
A	Garage Keepers	N	N	RM5CA00004-171	09/01/2017	09/01/2018	See Attached


DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Denver Palm Corporation, 1672 Lawrence Street at the Westin Tabor Center, Denver, CO 80202.

City and County of Denver is included as an Additional Insured as respects to General Liability.

Waiver of Subrogation applies in favor of City and County of Denver with respects to General Liability.

**CERTIFICATE HOLDER****CANCELLATION**

City and County of Denver 201 West Colfax Avenue Department 602 Denver, CO 80202	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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## ADDITIONAL COVERAGE SCHEDULE

COVERAGE	LIMITS
<b>POLICY TYPE: Garage Keepers Coverage</b> <b>CARRIER: Everest National Insurance Company</b> <b>POLICY TERM: 9/1/2017 – 9/1/2018</b> <b>POLICY NUMBER: RM5CA00004-171</b>	<b>Applies to DC &amp; VA - Contingent AOS</b> <b>Per Location Limit: \$250,000</b> <b>Deductibles: \$500 Per Auto</b>
<b>POLICY TYPE: Liquor Liability</b> <b>CARRIER: Everest National Insurance Company</b> <b>POLICY TERM: 9/1/2017 – 9/1/2018</b> <b>POLICY NUMBER: RM5GL00003-171</b>	<b>Liquor Aggregate: \$10,000,000</b> <b>Per Location Aggregate: \$2,000,000</b> <b>Per Location Liquor Aggregate subject to the Overall General Aggregate</b>