

AMENDATORY SPONSORSHIP AGREEMENT (Alcohol Spirits Sponsor)

This **AMENDATORY SPONSORSHIP AGREEMENT** (this "Agreement") is made and entered by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized and existing under and by virtue of Article XX of the Constitution of the State of Colorado (the "City"), and **PERNOD RICARD USA, LLC**, a Delaware limited liability company, authorized to conduct business in Colorado, located at 250 Park Ave., New York, NY 10177 ("Sponsor"), collectively "the Parties".

RECITALS:

A. The Parties entered into an Agreement dated August 29, 2023, (the "Agreement") to perform, and complete all of the services and produce all the deliverables set forth on Exhibit A, the Scope of Benefits, to the City's satisfaction.

B. The Parties wish to amend the Agreement to extend the term, update paragraph 2.15.16. Review Of Records, and amend the payment schedule exhibit.

NOW THEREFORE, in consideration of the premises and the Parties' mutual covenants and obligations, the Parties agree as follows:

1. Section 2 of the Agreement entitled "AGREEMENT", subsection 2.1 entitled "Term." is hereby deleted in its entirety and replaced with:

"2.1. Term. The term of this Agreement shall commence as of **April 1, 2023** (the "**Effective Date**"), and shall end at 12 o'clock midnight on **December 31, 2026** (the "**Term**"). For purposes of this Agreement, a "Contract Year" shall mean each period commencing on January 1 and ending on the following December 31 throughout the Term. The Term may not be increased without approval of Bond Counsel."

2. Section 2.15. of the Agreement entitled "Miscellaneous General Provisions," subsection 2.15.16 entitled "Review of Records." is hereby deleted in its entirety and replaced with:

"2.15.16. Examination of Records and Audits. Sponsor agrees that any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Sponsor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Sponsor shall

cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audit pursuant to this paragraph shall require Parties to make disclosures in violation of state or federal privacy laws. Parties shall at all times comply with D.R.M.C. 20-276.”

3. **Exhibit B** is hereby deleted in its entirety and replaced with **Exhibit B-1, Payment Schedule**, attached and incorporated by reference herein. All references in the original Agreement to **Exhibit B** are changed to **Exhibit B-1**.

4. This Amendatory Sponsorship Agreement has been approved by Bond Counsel as reflected on **Exhibit C-1**, attached hereto.

5. As herein amended, the Agreement is affirmed and ratified in each and every particular.

6. This Amendatory Sponsorship Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

Contract Control Number: THTRS-202370826-01 [THTRS-202266262-01]
Contractor Name: PERNOD RICARD USA, LLC

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:
Contractor Name:

THTRS-202370826-01 [THTRS-202266262-01]
PERNOD RICARD USA, LLC

By:  _____
1ADE08709248477...

Name: Kevin Fitzgerald
(please print)

Title: Area Vice President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Exhibit B-1

Payment Schedule

Annual Sponsorship Investment

2023 \$379,000

2024 \$394,000

2025 \$402,000

2026 \$309,000

Payment Dates

January 1, 2023 \$189,500

July 1, 2023 \$189,500

January 1, 2024 \$197,000

July 1, 2024 \$197,000

January 1, 2025 \$201,000

July 1, 2025 \$201,000

January 1, 2026 \$154,500

July 1, 2026 \$154,500

Maximum Payment Amount: \$1,484,000.00

Additional Considerations:

Sponsor will provide annual plan for in-market activations, promotions, and media by February 15 in 2023 and February 1 of each following calendar year. Sponsor will invest \$225,000 annually into on-site activation, media, and in-market support to support the sponsorship. Sponsor will furnish documentation of activation costs annually.



Kutak Rock LLP
2001 16th Street, Suite 1800, Denver, CO 80202
office 303.297.2400

October 31, 2023

City and County of Denver
c/o Denver City Attorney's Office
1437 Bannock, Room 353
Denver, Colorado 80202

Re: Private Business Use Review and Analysis: Amendatory Sponsorship Agreement
between the City and County of Denver and Pernod Ricard USA, LLC

Ladies and Gentlemen:

We have been advised that the City and County of Denver (the "City") intends to enter into an Amendatory Sponsorship Agreement (the "Agreement") with Pernod Ricard USA, LLC (the "Sponsor"). The Agreement contemplates sponsorship uses (the "Uses") by the Sponsor of the following City facilities (the "Facilities"): Red Rocks Amphitheatre; Denver Coliseum; Denver Performing Arts Complex; and Colorado Convention Center. As consideration for the Uses, the Sponsor is to make annual fixed payments to the City. The City has indicated that certain or all of the Facilities have been financed or refinanced in whole or in part with tax-exempt bond or lease obligations ("Obligations"). The City has requested that we review the Agreement to determine whether private business use generated by the Agreement will cause the private business use limitations applicable to the Obligations imposed by Section 141 of the Internal Revenue Code of 1986 (the "Code") to be exceeded.

For the purpose of our review, the City has provided to us (1) on October 25, 2023, a draft copy of the Agreement (the "Draft Agreement"), (2) on February 28, 2023, a schedule of insured values of City properties including the Facilities (the "Schedule of Insured Values"), and (3) on March 9, 2023, a schedule allocating payments to be made by the Sponsor with respect to the Uses (the "Allocation Schedule").

The legal analysis contained in this letter assumes that the terms of the Agreement are negotiated through an arm's-length bargaining process, that the documents referenced in the preceding paragraph accurately reflect, as applicable, the Facilities, the Uses, the insured values of the Facilities and the allocations of payments to be made by the Sponsor under the Agreement, and that there will be no private business uses of any of the Facilities other than to the extent identified in the Calculations. We have not conducted any independent diligence and have not taken any steps to verify (i) the accuracy of the documents referenced in the preceding

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City and County of Denver
c/o Denver City Attorney's Office
October 31, 2023
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paragraph, (ii) that there are no other private business uses of the Facilities and (iii) the validity and enforceability of the Agreement. We have reviewed the Draft Agreement and assume for the purpose of this letter that the execution version of the Agreement will not differ from the Draft Agreement.

The Internal Revenue Service has recognized in Private Letter Ruling 200323006 that an appropriate methodology for measuring private business use, when such use occurs simultaneously with governmental use, is to compare the fair market value of the contract resulting in private business use to the fair market value of the tax-exempt financed facility. Accordingly, applying this methodology to calculate the private business uses expected to be generated by the Agreement (using current insured values as estimates of fair market values), the Uses, in and of themselves, of the Facilities by the Sponsor under the Agreement will not cause the City to exceed the private business use limitations applicable to the Obligations under Section 141 of the Code and therefore will not adversely affect the exclusion from gross income for federal income tax purposes of any interest on the Obligations.

The scope of our engagement has not extended beyond the review of the Draft Agreement, the Schedule of Insured Values, the Allocation Schedule and certain private business use calculations we have prepared for our file. The conclusions expressed herein are based on existing laws on the date hereof, and we express no opinion as of any subsequent date or with respect to any pending or future proposed or final Treasury Regulations and legislation. The conclusions expressed herein are based on the stated initial terms of the Agreement and do not extend to any automatic extensions, renewal periods, amendments or continuations of the terms of the Agreement. Lastly, this letter has been prepared solely for your use and may not be relied on by any other person without our prior written consent.

Very truly yours,


Kutak Rock LLP

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