

## FIRST AMENDMENT TO USE AGREEMENT

**THIS FIRST AMENDMENT TO USE AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”), and **DENVER PALM CORPORATION**, a Colorado corporation (the “User”). City and User shall be individually referred to herein as a “Party” and jointly as the “Parties.”

### RECITALS:

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

**B.** The User entered into a Use Agreement executed on or about November 7, 2017 (the “Agreement”) for the User to occupy certain space as a seating area which is within Skyline Park (“Patio”); and

**C.** Rather than enter into a new Agreement, the Parties desire to revise the terms and conditions of the Agreement as they previously existed and the Parties further desire to amend the Agreement to extend the duration of the Agreement and add a condition that the User’s configuration is subject to change.

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

1. Section 1 of the Agreement entitled “**USE OF SPACE**” is amended to read 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. The User's configuration is subject to change based on the City's new park design and/or design guidelines."

2. Section 2 of the Agreement entitled "**DURATION**" is amended to read as follows:

"**2. DURATION**: The term of the Agreement is from November 1, 2017 through November 1, 2019, subject to termination as provided in paragraph 7."

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

4. This Amendatory 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 BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

**[SIGNATURE PAGES TO 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:** PARKS-201736804-01

**Contractor Name:** Denver Palm Corporation

By: James A. Longo

Name: JAMES A. LONGO  
(please print)

Title: VP  
(please print)

**ATTEST: [if required]**

By: Kirk Drumming

Name: KIRK DRUMMING  
(please print)

Title: SPECIAL PROJECTS MANAGER  
(please print)

