

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 **EPERNAY LLC**, a Colorado limited liability company, whose address is 1080 14th Street, Denver, Colorado 80202 (the “Tenant”), jointly “the parties”.

BACKGROUND:

WHEREAS, GPAC, Inc. (“GPAC”) and Tenant entered into that certain Lease, dated August 5, 2011, as amended by a lease Addendum of the same date (collectively, the “Lease”), by which Tenant agreed to lease property known as 1080 14th Street, Denver, CO 80204, and also known as Space 1A-3 through 1A-6 in the Galleria of the Denver Performing Arts Complex; and

WHEREAS, on or about January 18, 2016, the Lease was assigned to the City by GPAC;

WHEREAS, the parties seek to amend the Lease by modifying the term length; and addressing patio usage, closing times and additional security required during the modified term;

NOW, THEREFORE, for the foregoing reasons and for other good and valuable consideration, the sufficiency of which is acknowledged, and in consideration of the mutual covenants and agreements described in the Lease and herein, the parties agree as follows:

1. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Lease.

2. The paragraph entitled ‘Lease Term’ in the Lease shall be deleted and replaced with the following:

“‘Lease Term’ means the period commencing on the Commencement Date and ending on December 31, 2019. Notwithstanding anything contained herein, Tenant shall be permitted to operate in the Leased Premises until 1:30 a.m. on January 1, 2020, and shall otherwise have access to the Leased Premises until 5 p.m. on January 5, 2020, to fully vacate the Leased Premises and restore the Leased Premises to the condition required by the Lease (“Move-out period”). After 1:30 a.m. on January 1, 2020, Tenant shall not conduct any commercial activity in the Leased Premises during the “Move-out period”. After 1:30 a.m. on January 1, 2020, the City shall resume control and possession of the Leased Premises, and Tenant shall have access to the Leased Premises after 1:30 a.m. on January 1, 2020 from 8 a.m.-5 p.m. as directed by the City until 5 p.m. on January 5, 2020.”

3. In the Lease Addendum dated August 5, 2011 (“Addendum”), the ‘Term of Lease’ paragraph shall be deleted and replaced with the following:

“Term of Lease: The Lease Term shall expire on December 31, 2019 (“Expiration Date”), unless subsequent to the date of the Amendatory Agreement the parties fully execute a written extension of the Lease on or before the Expiration Date.”

4. All references to base rent, monthly CAM and Percentage Rent charges, and renewals applicable to a period after December 31, 2019 pursuant to the Lease, Addendum or any other documents pertaining to the Lease, are hereby amended consistent with an Expiration Date of December 31, 2019. Unless the Lease is hereafter extended by the parties in writing, no base rent, monthly CAM or percentage rent charges shall be owed by Tenant for any period subsequent to the Expiration Date. However, any damages incurred by City pursuant to the Lease, including for constructive or actual holdover, which is prohibited, shall remain the responsibility of Tenant.

5. Should Tenant’s liquor license for the Leased Premises be suspended, between the date of this Amendatory Agreement and December 31, 2019, base rent and monthly CAM charges shall be abated for the duration of any such suspension (“Suspension Period”). Tenant agrees that it shall not conduct any commercial activity in the Leased Premises during the Suspension Period.

6. Article XVIII of the Lease entitled ‘Holding Over’ shall be deleted in its entirety. In no event shall Tenant be permitted to holdover after the Expiration Date without written agreement of the parties subsequent to the date of this Amendatory Agreement.

7. From and after the date of the Amendatory Agreement Tenant shall hire, at its sole cost and expense, two additional off-duty police officers to enhance safety in and around the Leased Premises (“Additional Security Personnel”) during its hours of operation and for 30 minutes after Final Closing Time. For the remainder of the Lease Term, the Additional Security Personnel shall be deployed and positioned in a manner acceptable to the City in writing.

8. The Paragraph entitled “Permitted Use” in the Lease and the first paragraph of the Addendum shall hereby be amended by deletion of the language “with Patio.” Notwithstanding anything contained in the Lease, Tenant agrees for the remainder of the Leased Term to not operate the patio on the West side of the Leased Premises in connection with its use of the Leased Premises. Tenant’s customers shall be permitted to smoke on the patio on the East side of the Leased Premises during Tenant’s hours of operation, however, no commercial activity shall be conducted on the East patio at any time.

9. Tenant agrees to turn on its interior lights and cease alcohol service on the Leased Premises no later than 1:00 a.m. Further, Tenant agrees to close its doors and no longer operate within the Leased Premises after 1:30 a.m. (“Final Closing Time”).

10. The parties agree that the terms of this Amendatory Agreement are to be strictly construed and enforced. Should Tenant fail to comply in any way with paragraph 7, 8, or 9 of this Amendatory Agreement, it shall constitute an event of default pursuant to the Lease and the Lease shall be subject to termination.

11. The parties agree that certain activities of Tenant prior to the date of this Amendatory Agreement may constitute an actionable event of default pursuant to the Lease. Notwithstanding the foregoing, City agrees that it shall not initiate an eviction proceeding against Tenant subsequent to the date of this Amendatory Agreement and prior to December 31, 2019 based on conduct occurring prior to this Amendatory Agreement so long as Tenant hereafter strictly complies with the terms of this Amendatory Agreement and the Lease.

12. Tenant shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Amendatory Agreement, Tenant expressly acknowledges that Tenant is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Tenant, or any other individual or entity acting subject to this Lease, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

13. Tenant expressly affirms that it has not assigned or transferred any interest in the Lease and that the undersigned has full power and authority to execute this Amendatory Agreement on behalf of Tenant.

14. Tenant consents to the use of electronic signatures by the City. This 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 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 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.

15. The Parties agree that this Amendatory Agreement shall be deemed effective as of August 1, 2019.

16. Except as herein amended, the Lease is affirmed and ratified in each and every particular. In the event of any conflict between the Lease and this Amendatory Agreement, the terms and conditions of this Amendatory Agreement shall control.

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Contract Control Number: THTRS-201951344-01
Contractor Name: Epernay 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:

Mayor

Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

Assistant City Attorney

Manager of Finance

By:

Auditor

Contract Control Number:
Contractor Name:

THTRS-201951344-01
Epernay LLC

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Contract Control Number: THTRS-201951344-01
Contractor Name: Epernay 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-201951344-01
Epernay LLC

By: 

Name: Jessie Mack
(please print)

Title: Manager
(please print)

ATTEST: [if required]

By: 

Name: Jerome Geraghty, Esq.
(please print)

Title: Attorney for Epernay, LLC
(please print)