

FUNDING AND ASSIGNMENT AGREEMENT

THIS FUNDING AND ASSIGNMENT AGREEMENT (the “**Agreement**”), by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “**City**”) and **URBAN PEAK DENVER**, a Colorado nonprofit corporation with an address of 2100 Stout Street, Denver, Colorado 80205 (“**Urban Peak**”) and **THE PEAK, INC.**, a Colorado nonprofit corporation intended to a special purpose entity related to the Project (as defined herein) (“**SPE**”) (collectively, Urban Peak and SPE shall be referred to herein as the “**Urban Peak Entities**”), each a “Party” and collectively the “Parties.”

RECITALS

WHEREAS, the qualified and registered voters of the City approved referred question 2B on November 2, 2021, approving the issuance of general obligation bonds (the “**Bonds**”) by the City in the aggregate principal amount of \$38,600,000.00 for the purpose of financing the cost of repairs and improvements to the City’s housing and sheltering system; and

WHEREAS, Urban Peak intends to complete the construction of a shelter structure that will include at least twenty (20) congregate shelter beds serving minors, thirty-two (32) congregate shelter beds serving transition-age youth, and eighty-four (84) non-congregate shelter beds serving minors or transition-age youth (“**Shelter Facility**”) located at 1630 South Acoma Street, Denver Colorado (the “**Property**”) and the City desires to make a part of the proceeds, totaling an amount not to exceed Sixteen Million, Seven Hundred and Sixty-Four Thousand, Five Hundred and Sixty-Seven Dollars and No Cents (\$16,764,567.00) of the Bonds (the “**Proceeds**”), available to fund costs associated with the above-stated improvements to the buildings and grounds all as more fully described below and in **Exhibit A**, as attached hereto and incorporated herein (the “**Project**”), in accordance with the terms and conditions of this Agreement; and

WHEREAS, Urban Peak is willing and has the present capacity to satisfactorily complete and operate the Project for the use and benefit of the citizens of the City, as specified herein; and

WHEREAS, the undertaking and operation of this Project shall also be in conformance with that Shelter Operating Agreement (“**Shelter Operating Agreement**”) and Declaration of Restrictive Covenant Agreement (“**Covenant**”), substantially final copies of which are

respectively attached hereto and incorporated herein as **Exhibit B-1** and **Exhibit B-2**, (collectively and as may be further amended or restated, the “**Operating Agreements**”) which set forth certain use restrictions and operating requirements being imposed by the City to ensure that the Property is operated in conformance with all requirements pertaining to and imposed by the City for the use of Bonds as funding the Project; and

WHEREAS, following the recording of the Covenant, Urban Peak may transfer the fee simple ownership of the Property to the SPE for all or a portion of the duration of the Project; and

WHEREAS, the City and Urban Peak desire to specify the conditions upon which these funds, including the Proceeds, will be used by Urban Peak for the purposes of completing the Project.

NOW, THEREFORE, in consideration of the above, and the mutual promises and covenants contained herein, the City and Urban Peak agree as follows:

1. **The Project**: The “Project,” as used herein, refers to the congregate and non-congregate Shelter Facility comprised of at least one hundred and thirty-six (136) beds, as well as a commercial kitchen, a low-income medical clinic, or other services and activities offered and provided by Urban Peak at the Property (collectively, the “**Non-Shelter Facility**”), all to be designed, constructed, and installed by Urban Peak on the Property in accordance with a design plan to be submitted by Urban Peak to the City for approval, and as generally described in **Exhibit A**. The Shelter Facility will be funded, at least in part, by the Proceeds, to the extent such Proceeds are made available hereunder. Urban Peak will perform or cause to be performed all work items and provide all supplementary funds necessary to satisfactorily complete the Project in accordance with the terms and conditions of this Agreement. The preliminary construction budget for the Project has been reviewed and approved by the Manager, as that term is defined in Section 2.A, below, and is attached hereto as **Exhibit A-1**, (the “**Project Costs**”). For sake of clarity, the term “Project Costs” as used in this Agreement shall incorporate the Project-related costs that will be eligible to be paid by the Proceeds and the remaining Project-related costs that will be paid by non-Proceeds sources, all as may be needed to fully complete the Project. Urban Peak is to notify the Manager, as that term is defined in Section 2.A, below, for prior review and approval of: 1) any scope revisions to **Exhibit A** that result in changes to either the approved Interim Project Plans, as described in Section 5.A.2, below, or the approved Final Project Plans, as described in Section 5.A.3, below, or, 2) budget revisions to **Exhibit A-1** that exceed the total budgeted Project Costs;

any scope revisions to **Exhibit A** resulting in changes to either the approved Interim Project Plans or approved Final Project Plans or Project Cost revisions that exceed the total budgeted Project Costs described in **Exhibit A-1** shall only be incorporated into this Agreement pursuant to an amendment approved and executed by the Parties in the same manner as this Agreement. The City acknowledges that Urban Peak may, in addition to the anticipated Shelter Facility described above, offer and provide the Non-Shelter Facility at the Property which, absent agreement to the contrary, shall be constructed and operated by Urban Peak at no cost to the City.

2. **Coordination and Liaison:**

A. The City's Executive Director of the Department of Transportation and Infrastructure, (along with any other designees, the "**Manager**") is the City's representative responsible for authorizing and approving the Project work performed under this Agreement and in performing the City's obligations hereunder. The Manager hereby designates the Program Implementation Manager, and any designees, as the Manager's authorized representative for purposes of administering, coordinating and approving the Project work performed by Urban Peak pursuant to this Agreement. The Program Implementation Manager shall be responsible for day-to-day administration, coordination and approval of Project work performed hereunder, except for approvals that are specifically identified in this Agreement as requiring the approval of other designated City employees or officials. The Manager expressly reserves the right to designate other authorized representatives to perform on the Manager's behalf by providing written notice to Urban Peak.

B. The CEO, Director of Finance and Director of Operations of Urban Peak are Urban Peak's authorized representatives under this Agreement and, as such, are responsible for overseeing the satisfactory completion of the Project, in accordance with the terms and conditions of this Agreement. Urban Peak may change its authorized representatives at any time by providing written notice to the City of such change.

C. The Chair of the Board, Secretary of the Board and Treasurer of the Board of SPE are SPE's authorized representatives under this Agreement. The SPE may change its authorized representatives at any time by providing written notice to the City and Urban Peak of such change.

3. **City Payment and Related Responsibilities:**

A. As consideration for the performance of Urban Peak under this Agreement

and in order to enhance the ability of Urban Peak to perform the functions and services set forth in the Operating Agreements, the City agrees to pay the Proceeds towards the cost of completing the Project limited to the construction of the Shelter Facility. All other expenditures required to complete the Project or other costs associated with the Project are solely the responsibility of Urban Peak and shall be paid by Urban Peak and/or other non-Proceed sources, which may include all or a combination of self-funding and public or private financing. As of the date of this Agreement and as described in **Exhibit A-1**, the total estimated cost of the Project is Thirty-Eight Million, Six Hundred and Eighteen Thousand, Seven Hundred and Thirty-Six Dollars and No Cents (\$38,618,736.00). Notwithstanding the foregoing, it shall be a condition precedent to the City's obligation to pay any portion of the Proceeds to Urban Peak for Urban Peak to provide evidence satisfactory to the City that Urban Peak has secured sources of funding for the entirety of the Project, including the Proceeds and any amounts in excess of the Proceeds. For purposes of this Agreement, executed agreements and letters of intent by funding parties shall be sufficient evidence of the secured sources of funding for the Project.

Unless otherwise specified herein, the Proceeds shall be made available to Urban Peak to be expended to pay capital Project Costs incurred in completing the Shelter Facility portion of the Project including, but not limited to, costs associated with design, construction, Project management, furnishings, and equipment. **The Proceeds, if and when provided by the City to Urban Peak, shall not be used for any costs that are not Project Costs directly related or attributable to the Shelter Facility.** Eligible Shelter Facility-related Project Costs incurred by Urban Peak after August 26, 2021 may be eligible for reimbursement from the Proceeds. Urban Peak may reallocate the Proceeds among the eligible Shelter Facility Project Cost categories within the Project Costs, provided that the total Project Cost budget does not increase beyond what is listed in **Exhibit A-1**. Urban Peak will not utilize the Proceeds for Non-Shelter Facility-related capital Project Costs, operating costs or other working capital expenditures related to the Project. Urban Peak shall submit to the Manager any use of Proceeds for furniture, fixtures, and equipment for prior review and approval not previously approved in the Project Costs.

B. Upon the City's receipt of the Proceeds, the City agrees to pay to Urban Peak the Proceeds from available funds upon notice from Urban Peak that it is ready to commence the Project as draws are submitted and approved by the Manager for payment from the Proceeds, as further described in Section 5.B below and in accordance with the terms and conditions of this

Agreement.

C. Upon Urban Peak's receipt of a final certificate of occupancy for the Project, Urban Peak shall provide to the City an accounting of all Proceeds and other funds expended on the Project, which accounting shall include copies of invoices, pay-applications, deposited checks or other proofs of payment, and other and shall attach all required or requested supporting documentation by the City. Such accounting, including supporting documentation, shall be sufficient to demonstrate that the Proceeds have been expended only for actual eligible Project Costs associated with the completion of the Shelter Facility portion of the Project and in accordance with the terms and conditions of this Agreement. The accounting shall itemize the expenditure of the Proceeds for Shelter Facility design cost, construction cost, project management cost, furnishing cost, equipment cost, or other administrative cost category, and must also provide a total of all expenditures, to date, for each referenced category, regardless of the source of funds.

D. The Parties agree that the obligation of the City for all or any part of its payment obligation hereunder, whether direct or indirect, shall extend only to the payment of the Proceeds that are duly and lawfully appropriated by the City Council for the purpose of this Agreement.

E. To further the construction of the Project, Urban Peak intends to secure federal new markets tax credits financing (the "**NMTC Financing**") from a community development entity. The NMTC Financing program is administered by the CDFI Fund, a subset of the U.S. Department of Treasury. To meet NMTC Financing structural requirements, Urban Peak may utilize a special purpose entity, which will be the SPE. Upon the closing of the NMTC Financing but only after the recording of the Covenant, Urban Peak may transfer ownership of the Property to the SPE. Upon such transfer, SPE shall lease the Property to Urban Peak and contract with Urban Peak to oversee the management, design and construction of the Project.

4. **Assignment**: The City hereby assigns to Urban Peak, and Urban Peak hereby accepts, the City's obligation to spend the Proceeds in accordance with the applicable terms and conditions of the Bonds as detailed in this Agreement. The Project must be designed, planned, and constructed in accordance with plans adopted by Urban Peak and approved by the Manager in accordance with this Agreement and as otherwise approved by the City.

5. **Urban Peak Responsibilities:** Except as otherwise provided in this Agreement, Urban Peak shall have sole responsibility with respect to undertaking and completing the Project in accordance with this Agreement.

A. Before any phase of the work is commenced for the Project, Urban Peak shall submit design plans and specifications for such work for the written approval of both the Manager and the Executive Director of the City's Department of Housing Stability (along with any designees, the "**Executive Director**"). The City agrees that such approval may be provided exclusively via email at the City's sole discretion.

1. Urban Peak shall be responsible for seeking qualifications, competitively selecting, and retaining qualified and licensed design professionals, construction professionals, installers, surveyors, or other necessary consultants according to the needs of the Project who will prepare the design, construction and/or installation documents for the Project; and for bidding and letting out the work to qualified, licensed and experienced contractors. Notwithstanding the foregoing, the City acknowledges that design professionals, surveyors, appraisers, environmental consultants, and soil engineers may be selected for work on the Project by Urban Peak pursuant to a professional preference exception to a competitive selection process in consultation with and upon the approval of the Manager, which approval shall not be unreasonably withheld.

2. Urban Peak shall provide Interim Project Plans (approximately 50% design development) for review, comment and approval by the Manager and the Executive Director or designee, and the City's comments or approval shall be provided to Urban Peak within thirty (30) days of receipt of the Interim Project Plans. Any deficiencies in Interim Project Plans shall be remedied by Urban Peak, to the reasonable satisfaction of the Manager and the Executive Director, or designee, prior to the commencement of construction.

3. Urban Peak shall provide Final Project Plans (100% design development) for review and approval by the Manager and the Executive Director or designee, and the City's comments or approval shall be provided to Urban Peak within thirty (30) days of receipt of the Final Project Plans. Any deficiencies in Final Project Plans shall be remedied by Urban Peak, to the reasonable satisfaction of the Manager and the Executive Director, or designee, prior to the commencement of construction. Based upon the Final Project Plans, Urban Peak shall update the Project Costs. Notwithstanding the requirements of Section 1, above, updates to the Project Costs that are required in connection with the approval of Final Project Plans described in

this Section 5.A.3 may be approved upon written confirmation of the Manager and the Executive Director, or designee, without further amendment to this Agreement; such written confirmation, if and when provided to Urban Peak, shall be automatically incorporated into this Agreement.

4. Design review will include a review for safety engineering purposes by City's insurance carrier and the City's Risk Management office, which review and recommendation will be reported to the Program Manager of the City's Department of Transportation and Infrastructure.

B. Urban Peak shall submit to the Program Implementation Manager and the Executive Director in advance fiscal quarterly draw requests that estimate the Proceeds and other funds needed for the upcoming annual fiscal quarter. With each draw request, Urban Peak shall provide: (1) an updated Project schedule; (2) a schedule of values; (3) a cash flow and detailed report of anticipated future expenditures for the next quarter and for the remaining work on the full Project, showing projected expenditures compared to the budget for the Project; (4) a detailed report of the expenditures made in the past on the Project, showing past expenditures compared to the budget for the Project including, without limitation, proof of payment on expenditures using Proceeds and true-up on prior payments from the Proceeds; and (5) other reasonable information related to the Project as may be requested by the City (each a "**Quarterly Progress Report**"). Failure to provide such documents as requested may result in a delay by City of providing Proceeds requested in a particular draw request. Upon its receipt, the City shall review each Quarterly Progress Report as expeditiously as possible to provide Proceeds to Urban Peak requested in a particular draw request. The total maximum amount of Proceeds that the City will provide to Urban Peak until final acceptance, as detailed in Section 5.Y, below, is ninety-five percent (95%) of the Proceeds. The City shall pay the final retained five percent (5%) of the Proceeds when: a) the City accepts that the supporting documentation provided by Urban Peak substantiates the expenditures described in the final draw request; and b) the City has issued a Notice of Final Acceptance, as detailed in Section 5.Y, below, that confirms final acceptance of the improvements described for the Project.

C. Urban Peak shall provide to the Manager a public communication plan for approval and will continue to coordinate its public outreach efforts with the Manager.

D. Urban Peak shall at all reasonable hours ensure right of entry to any City inspector or other authorized agent of the City to the Property and the Project work site to conduct

tests and evaluations to determine that the work performed and materials used are of good quality and in conformance with the approved design plans and specifications. If the City, in its reasonable discretion, determines that the work is not otherwise being performed in accordance with this Agreement, the Manager may order that Urban Peak cease to conduct the work until there is satisfactory evidence that the work will be performed in accordance with this Agreement; provided that the City shall give Urban Peak thirty (30) days advance written notice of its concerns over performance and offer Urban Peak (or a NMTC Mortgagee, if applicable, as that term is defined in Section 36, below) a reasonable amount of time to cure any such concerns (in no event less than thirty (30) days) prior to requesting a ceasing of construction operations.

E. The City shall not charge Urban Peak for the City's activities under this Section 5, including design plan and specifications review, inspections, material testing, and construction monitoring. Standard building permit fees and other fees mandated by existing ordinance or rule for construction approvals, unless waived by the City in the City's sole discretion, will be paid from either Proceeds (to the extent applicable to the Shelter Facility) or by Urban Peak.

F. Urban Peak shall be solely responsible for assuring that all phases of the Project are properly contracted and the work performed and the materials used are in conformance with all applicable laws (local, state, and federal) that govern the performance of the work, including (to the extent applicable) the requirements of the federal Americans with Disabilities Act and any other federal or state laws requiring access for the disabled to public accommodations.

G. In addition to compliance with the above-mentioned laws, Urban Peak shall be governed and controlled by all limitations and provisions that are imposed upon the City's Department of Transportation and Infrastructure by the Charter or ordinances of the City. Specifically, such work shall be performed in compliance with the provisions:

- a. for competitive procurement set forth in the Denver City Charter at 2.3.3(A)(i) and Section 20-56 of the Denver Revised Municipal Code (as may be revised from time to time, "**DRMC**");
- b. for payment of minimum wages set forth in Sections 20-82 through 20-84, DRMC;
- c. for payment of prevailing wages set forth in Sections 20-76 through 20-79, DRMC;

- d. for public art in Sections 20-85 through 28-90, DRMC (the “**Public Art Ordinance**”);
- e. for workforce requirements described below in Section 5.DD; and
- f. for small business enterprise (“**SBE**”), equal employment opportunity, and minority and women business enterprise (“**MWBE**”) participation as set forth in the Professional Service and Construction Ordinance, DRMC Chapter 28, Article III; the Goods and Services Ordinance, Article V; and the Small Business Enterprise Ordinance, Article VII (altogether, the “**DSBO Ordinances**” and as further described below in Section 5.BB),

as the same may be amended or re-codified from time to time. The commencement and continuation of Project shall be dependent upon Urban Peak establishing to the City’s reasonable satisfaction through the course of the Project that these Charter and ordinance requirements have been fully and appropriately satisfied. Urban Peak shall fully cooperate with City officials, including the City Auditor, in assuring compliance with these requirements. Failure to comply with the requirements of this subsection G. shall be legal grounds under this Agreement for work to be ordered to cease or to be restricted, as deemed appropriate by the Executive Director, Manager or the City Auditor, until compliance is achieved and any unpaid claims or other remedial measures are resolved to the reasonable satisfaction of the City.

H. Insurance requirements.

a. **General Conditions:** Urban Peak agrees to secure, and maintain at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Urban Peak shall keep the required insurance coverage in force at all times during the term of this Agreement, including any extensions thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as “A-VIII” or better. Each policy shall require 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 Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. 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, Urban Peak 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. Urban Peak 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 Urban Peak. Urban Peak 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. Urban Peak covenants that any Project management contract(s) entered into between SPE and Urban Peak shall contain insurance requirements in the minimum amounts and types of coverages detailed in this Section 5.H, and shall include the City as an additional insured.

b. **Proof of Insurance:** Urban Peak may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. Urban Peak certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. 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 Urban Peak'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 additional proof of insurance, including but not limited to policies and endorsements.

c. **Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Urban Peak and Urban Peak's Contractors' (as that term is defined below in Section 5.I) insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. **Workers' Compensation/Employer's Liability Insurance:** Urban Peak 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. Urban Peak expressly

represents to the City, as a material condition and requirement of this Agreement, that none of Urban Peak's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Urban Peak executes this Agreement.

e. **Commercial General Liability:** Urban Peak shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.

f. **Automobile Liability:** Urban Peak shall maintain Automobile Liability with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

g. **Commercial Crime:** Urban Peak maintain minimum limits of \$100,000 in commercial crime insurance coverage. Coverage shall include theft of City's money, securities or valuable property by contractor's employees, including any extended definition of employee. The City and County of Denver shall be named as Loss Payee as its interest may appear.

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

I. Urban Peak shall require the design and construction professionals, contractors and subcontractors (collectively as used in this subsection I and **Exhibit D**, "**Contractors**") to obtain and maintain insurance in the amounts and types of coverages appropriate for the Project work, which shall include the City and Urban Peak as additional insureds. The insurance requirements shall be those specified in **Exhibit D** attached to and incorporated by reference into this Agreement and specified in any design or construction contract entered by Urban Peak with a Contractor. Failure to comply with the requirements of this subsection I shall be legal grounds under this Agreement for work to be ordered to cease or to be restricted, as deemed appropriate by the Executive Director, Manager, or the City's Risk Management Office, until compliance is achieved and any unpaid claims are resolved to the reasonable satisfaction of the Executive Director, Manager and the City's Risk Management Office. The obligations set out in this subsection I shall survive the expiration or termination of this Agreement.

J. Any agreement with a Contractor pertaining to any work on the Project shall include an indemnification and defense clause incumbent upon the Contractor, and approved by the City Attorney's Office and inured to the benefit of the City and Urban Peak, to protect both the City and Urban Peak against all claims, actions, and demands arising from or related to the Project work performed by the Contractor. Such indemnification and defense clause language shall be materially similar to the language contained in Section 32, below. Similar indemnification and defense language, benefiting both the City and Urban Peak, shall be included in the Performance and Payment Bond provided by the construction Contractor(s) under Section 5.K, below. After completion and full acceptance by the City of the Project, Urban Peak shall not release any Contractor of the Project for liability, damages, defense and indemnification without the consent of the City. The obligations set out in this Section 5.J shall survive the expiration or termination of this Agreement.

K. Urban Peak shall obtain and maintain, or require its contractor(s) and sub-contractor(s) to obtain and maintain, in advance and subject to approval by the Denver City Attorney's Office, one hundred percent (100%) payment and performance bond(s) from an acceptable surety. The City and Urban Peak shall be named as obligees on all bonds. Bonds provided by Urban Peak or Urban Peak's contractor(s) and sub-contractor(s) must be conditioned: (1) that prompt payment shall be made for all amounts lawfully due to all contractors, subcontractors, and persons or entities furnishing labor or materials used in the prosecution of the work on any phase of the Project; and (2) as guarantee of the obligation to complete the Project as provided in this Agreement. In addition, all design professionals, contractors and sub-contractors shall be required to include an indemnification and "hold harmless" clause, approved by and for the benefit of the City and Urban Peak, to protect both parties against claims, actions, and demands arising from or related to the work performed by the design professionals, contractors and sub-contractors. The dollar amount of such bonds shall be modified, as needed, to reflect any change orders that modify the total value of the Project or part of the Project. In addition, Urban Peak shall provide satisfactory evidence that all architects, engineers, designers, and other enrolled professionals have been fully paid. Failure to comply with the requirements of this subsection K shall be legal grounds under this Agreement for work to be ordered to cease or to be restricted, as deemed appropriate by the Executive Director, Manager or the City Attorney's Office, until compliance is achieved and any unpaid claims are resolved to the reasonable satisfaction of the

Executive Director, Manager and the City Attorney's Office. The obligations set out in this subsection K shall survive the expiration or termination of this Agreement.

L. Urban Peak shall obtain, exercise and enforce warranties and guarantees for all work it contracts and shall designate the City as an additional express beneficiary for enforcing all warranties and guarantees. After completion of the Project and acceptance by the City, all such warranties shall be maintained by Urban Peak. Urban Peak shall ensure that such warranties are transferrable. In the event that Urban Peak or SPE transfers or conveys ownership of the Property to the City, for any reason whatsoever, Urban Peak or SPE, as appropriate, shall also transfer such warranties to the City. Urban Peak's and SPE's obligations to transfer warranties to the City under this subsection L shall survive the expiration or termination of this Agreement, but only if and to the extent such warranties are not transferred before the expiration or termination of this Agreement.

M. Urban Peak shall submit to the City the form of all contracts to be entered into or entered into by Urban Peak in connection with the design and construction of the Project, which will be reviewed by the Office of the City Attorney and the Manager to assure compliance with the requirements of this Agreement, including, without limitation, compliance with City insurance requirements for the construction, similar to those listed in **Exhibit D**, in amounts to be determined based on size and complexity of the Project, in consultation with the City's Risk Management Office. Additionally, Urban Peak shall submit to the City the form of any Project management contract(s) entered into between Urban Peak and SPE for review by the Office of the City Attorney and the Manager to ensure compliance with the requirements of this Agreement. The Office of the City Attorney and the Manager shall review such contracts within twenty (21) days of the submittal of the contracts to the Manager by Urban Peak. Any warranty to be provided by a Contractor, as that term is defined in Section 5.I, above, to Urban Peak shall include the City as a beneficiary of the warranty. The City shall be entitled to withhold the disbursement of Proceeds to Urban Peak for any work performed pursuant to a contract detailed in this Section 5.M unless and until the City has reviewed and approved such contract in accordance herein.

N. Urban Peak and its contractors and subcontractors shall pay all applicable taxes, including sales and use taxes and occupational privilege taxes, levied by the State of Colorado and the City on any tangible property built into or incorporated into the Project work. Upon request by the City, an itemized and certified statement, including the names and addresses

of the suppliers, the amount of such taxes owed or paid, and the dates of payment, shall be furnished to the City. Urban Peak's obligations set out in this subsection N shall survive the expiration or termination of this Agreement. The Parties acknowledge that Urban Peak is a nonprofit corporation formed under Section 501(c)(3) of the Internal Revenue Service Code and nothing in this Agreement requires Urban Peak to pay taxes for any activities for which it is tax-exempt.

O. Urban Peak 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 portion of the Property, or any part thereof, by reason of any Project work or labor performed or materials or equipment furnished by any person or legal entity to or on behalf of Urban Peak, either pursuant to C.R.S. § 38-26-107, as may be amended, or by any other authority. Urban Peak 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. Urban Peak may bond around any such recorded mechanic's or materialman's liens in accordance with applicable Colorado law, with such bonds being paid for by Urban Peak with non-Proceeds sources of funding. Except as set forth in Section 36 below, Urban Peak 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. Urban Peak's obligations set out in this subsection O shall survive the expiration or termination of this Agreement.

P. Urban Peak and its construction contractor(s) and subcontractor(s) shall obtain all federal, state, and local environmental permits necessary for the work to be performed and shall comply with all applicable federal, state, and local environmental permit requirements applicable to the work. Urban Peak and its construction contractor(s) and subcontractor(s) shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders applicable to the work (collectively, "**Environmental Requirements**"), including but not limited to Environmental Requirements regarding the storage, use, transportation, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. The term "**Hazardous Materials**" shall mean asbestos, asbestos contaminated soils, and asbestos-containing materials, 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, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and any guidelines issued and rules or regulations promulgated pursuant to such statutes, or any other applicable federal or state statute. Urban Peak's obligations set out above in this subsection P shall survive the expiration or termination of this Agreement. If asbestos containing material is discovered within the Project site, the cost of remediation shall be the responsibility of Urban Peak. Urban Peak's contractor shall have a materials handling protocol pre-approved by the Denver Department of Environmental Health in place during the Project work.

Q. Urban Peak shall take all measures required by applicable law to minimize and control noise, water and air pollution, water discharges, and soil erosion resulting from work and activities associated with the Project and to avoid adverse impacts to the Property and surrounding property, wherever possible, as a result of noise, water and air pollution, water discharges, and soil erosion resulting from the Project work and activities.

R. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "**Certification Ordinance**"). Urban Peak certifies that:

a. At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.

b. It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., and confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. It will not enter into a contract with a subconsultant or subcontractor that fails to certify to Urban Peak that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

d. It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required to comply with any and all federal requirements related to use of the

E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

e. If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. Urban Peak shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during the three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.

f. It will comply with a reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

Urban Peak is liable for any violations as provided in the Certification Ordinance. If Urban Peak violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If this Agreement is so terminated, Urban Peak shall be liable for actual and consequential damages to the City. Any termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Urban Peak from submitting bids or proposals for future contracts with the City.

S. Urban Peak shall provide Quarterly Progress Reports to the City for each fiscal quarter through Project completion as described in Section 5.Y, below. Urban Peak shall ensure that all improvements are constructed in accordance with approved plans and specifications, as may be amended, and that no material changes to these plans and specifications will occur during construction, unless approved in advance and in writing by the Manager. Failure to request approval or to comply with rejections for material changes shall be legal grounds under this Agreement for construction work to be ordered to cease or to be restricted, as deemed appropriate by the Manager until such approval is obtained or the unapproved work is corrected. Urban Peak shall coordinate with and provide access to the Property for the Manager to inspect and approve the then-current status of the Project in advance of all Proceeds draw requests submitted by Urban Peak to the City for the City's consideration and approval; Urban Peak acknowledges that a failure

or refusal by Urban Peak to provide such coordination with and access for the Manager shall be considered an Urban Peak Default, as that term is defined in Section 7.b.1, below, and may result in a delay or denial in the City's disbursement of Proceeds to Urban Peak for the Project. The City shall remain a part of the Project team to provide input, recommendations and oversight. The City shall provide advanced notice to Urban Peak if additional review and approval is required for any part of the Project.

T. Urban Peak will provide and install at the Project site signs, in a form mutually agreeable to Manager, the Executive Director and Urban Peak, stating the scope of the Project and acknowledging the participation of the City and the Bond funding for the Project.

U. If, for any reason, construction of any phase of the Project is delayed or halted while in process for more than twenty-one (21) days, Urban Peak shall take reasonable measures to protect the existing Project site and buildings from weather damage, vandalism and other similar threats and to protect public safety on and around the Project.

V. Claims related to the design, construction and installation of the Project as addressed by this Agreement, including but not limited to design deficiencies, construction defects, deficient workmanship, failure to comply with environmental requirements, failures to make payment, and other claims under Urban Peak's contracts with its contractors or consultants for the Project work shall be reported to the City immediately upon discovery. Urban Peak shall, where applicable, delegate responsibility and liability for the Project work by contract to the contractor or consultant retained by Urban Peak to perform the Project work. Contracts executed by Urban Peak for the Project shall contain indemnity provisions requiring the contractor or consultant indemnify the City as well as Urban Peak. Urban Peak shall require of the contractors and consultants the insurance set forth in **Exhibit D**, and the bond requirements under Section 5.K, above, and require that the contractor or consultant include the City as an additional insured to any insurance policies. This subsection V in no way modifies the indemnification obligations and requirements under Section 5.J, above. Claims under this subsection V do not include claims related to the City's rights after Urban Peak completes the Project to the City's satisfaction including City ownership, operation and maintenance, and does not affect the City's rights to any warranties.

W. In the event of any material default by Urban Peak's contractor(s) or sub-contractor(s) under any contracts or otherwise, Urban Peak agrees to diligently pursue any

remedies available against said parties, and to timely advise the City as to Urban Peak's efforts in this regard and to allow the City's participation, if the City so requests.

X. Within thirty (30) days after a certificate of occupancy or its equivalent has been issued for the Property after completion of the Project, Urban Peak shall provide the Manager with complete, final and unconditional waivers or releases of all lien and claim rights from each contractor, sub-contractor, and supplier for all labor, equipment, and materials used or furnished by each contractor, sub-contractor, and supplier for the Project.

Y. Urban Peak shall provide the Manager with written notification of substantial completion of the Project in order that the City may participate in all punch list reviews and sign off on the Project. Urban Peak shall provide the Manager with written notification of receipt of the certificate of occupancy or its equivalent in order that the City may inspect all improvements as constructed and verify that the improvements have been constructed in accordance with approved plans and specifications for the Project and this Agreement without any material deviations, and the Project work is at final completion. Upon determination that the requirements set forth in this subsection Y have been fully satisfied, the Manager shall arrange with the Executive Director to issue a Notice of Final Acceptance letter accepting the improvements described for the Project. Detailed and stamped "as-built" plans will be provided to the Manager within sixty (60) days following the City's final inspection.

Z. Subject to the City providing Urban Peak with all of the Proceeds, excepting any allowable retainage and/or the Public Art Funding described in Section 5.CC, below, Urban Peak shall complete the Project within three (3) years of the date of the first draw of Proceeds by Urban Peak, all in accordance with the terms and conditions of this Agreement.

AA. Urban Peak agrees that any Proceeds received from the City may not be invested, if at all, at a rate greater than the rate to be provided by the City's Department of Finance at the time of disbursement of the Proceeds to Urban Peak. Urban Peak agrees to provide evidence of compliance with this responsibility at the time the investment, if any, occurs. Urban Peak agrees to monitor the deposit and any investment of Proceeds pending disbursement to a third party and provide the City with copies of all bank statements relating to the investment and expenditure of such amounts.

BB. Provisions for SBE and MWBE Requirements.

a. As a material condition of this Agreement, Urban Peak shall comply with all DSBO Ordinances, requirements of, and applicable rules and regulations promulgated by the City's Division of Small Business Opportunity ("DSBO"). Urban Peak shall require its contractors of all tiers to comply with the DSBO Ordinances for SBE and MWBE participation. Subject to the DSBO Ordinances and the DSBO director's authority under the DSBO Ordinances, Urban Peak as well as Urban Peak's contractors shall confer and cooperate with DSBO with regard to establishing goals or implementation of other DSBO requirements. Urban Peak shall notify and coordinate with DSBO on its upcoming Project procurements, required procurement language and forms, scoring criteria and evaluation panelists. All procurement documents, including, without limitation, invitations to bid, requests for qualifications and requests for proposals, shall be submitted to DSBO at least thirty (30) days' prior to advertisement or publication. Applicable DSBO provisions and clauses shall be included in all procurement documents, agreements or contracts related to the Project work. Urban Peak shall promptly provide to DSBO copies of all Project proposals or bids it receives in response to advertised procurements to allow DSBO to evaluate such Project proposals or bids for responsiveness. Urban Peak shall ensure that as a material condition of any of its contracts related to the Project, contractors will have an ongoing, affirmative obligation to maintain for the duration of Urban Peak's contract for work, at a minimum, compliance with the SBE or MWBE participation established by DSBO and as generally described in this Section 5.BB.

b. Urban Peak is required to monitor the contractors' work and activities related to the Project to ensure that such contractors in fact comply with applicable DSBO requirements throughout the life of the contract. Urban Peak shall identify and provide a liaison for DSBO to assist with such monitoring work, and Urban Peak shall also require its contractors to provide one or more similar liaison(s) to DSBO. The City acknowledges that the contractors' liaison(s) may be more knowledgeable than the Urban Peak liaison regarding the specific Project work and its compliance with the DSBO Ordinances. Urban Peak shall ensure that its liaisons, and its contractors' liaisons, be responsible for, without limitation, obtaining and coordinating: 1) contact information of all contractors and Urban Peak personnel directly related to the applicable Project work, 2) submittals, 3) invoicing and payment information, and 4) reporting information and interfacing with DSBO, all to address various issues or concerns related to Project compliance

with the applicable DSBO requirements. DSBO shall perform and assist with compliance monitoring oversight to ensure compliance with the DSBO Ordinances.

c. If change orders or any other modifications to the applicable Project work are issued by Urban Peak, then Urban Peak shall have a continuing obligation to promptly inform DSBO in writing of any agreed-upon increase or decrease in the scope of work. Urban Peak shall ensure that if change orders or any other modifications to the applicable Project work are issued by the Urban Peak contractor, then the Urban Peak contractor shall have a continuing obligation to promptly inform DSBO in writing of any agreed-upon increase or decrease in the scope of work.

d. Urban Peak's failure to comply with these provisions may be a material breach of this Agreement and may result in withheld future Proceeds payments by the City. A contractor's failure to comply with these provisions may subject the contractor to sanctions set forth in the DSBO Ordinances. Further information and guidance can be found at the following: <https://www.denvergov.org/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Economic-Development-Opportunity/Do-Business-with-the-City>, or from DSBO directly via email at DSBO@denvergov.org.

CC. The calculation of funding required for public art pursuant to the Public Art Ordinance (“**Public Art Funding**”) shall be determined based upon the value of the entire Project inclusive of: 1) the amount of Proceeds allocated to the Project; and 2) any other funding sources identified by Urban Peak. An initial estimate of the Public Art Funding for the Project, subject to further revision as actual Project Costs are determined upon substantial completion of the Project in accordance with Section 5.Y, above, is Three Hundred and Eighty-Six Thousand, One Hundred and Eighty-Eight Dollars and No Cents (\$386,188.00). All Public Art Funding, if any, shall be remitted to, or retained by, the City's Manager of Finance, as circumstances require. Unless otherwise agreed upon by the City's Manager of Finance and Urban Peak, which agreement shall not require an amendment to this Agreement, such Public Art Funding shall be retained from the disbursement of Proceeds to Urban Peak by the City. To the extent that any Public Art Funding is or will be spent on public art that will be located upon the Property, Urban Peak shall grant to the City an easement, the form of which is attached as **Exhibit E**, to enable the City to install, maintain, operate, repair, replace and remove the public art, as applicable.

DD. The Parties acknowledge the City's interest in increasing the awareness, outreach, training and employment opportunities of people in economically disadvantaged areas and populations, and addressing shortages in qualified construction workers. In support of this, Urban Peak shall include the following workforce development-related activities for the Project in coordination with the City's Denver Construction Careers Program located within the City's Office of Denver Economic Development & Opportunity ("DEDO"): 1) identify a designated point of contact for workforce development-related activities; 2) post new positions online with Connecting Colorado at www.connectingcolorado.com; 3) participate in WORKNOW, the City's workforce development platform found at www.work-now.org, and/or City-led outreach and recruitment events; 4) Utilize WORKNOW and City employment support services to help establish and build workforce training and support services for the Project; and 5) provide quarterly reports to DEDO on the number of outreach and job fairs held or attended, including information about where it was held, who sponsored the event, and the number of people hired at and/or as a result of participating in the event. The activities described in this Section 5.DD are not intended to replace existing and/or on-going workforce development activities that Urban Peak and its contractors and subcontractors utilize and/or provide for the Project, and shall supplement such activities.

EE. To the extent that any Proceeds are used for hard construction costs, Urban Peak shall retain and not release five percent (5%) of payment of such hard construction invoices using Proceeds unless and until all construction conditions and contingencies detailed in this Agreement are satisfied and the City has received a copy of an executed temporary certificate of occupancy or certificate of occupancy for the Property from Urban Peak. Notwithstanding the above, if any contractor, subcontractor or materialmen has provided final invoices for work performed which is accepted by contractor, Urban Peak and City, and has provided a discount on their bid based upon such payment, Urban Peak may release the full amount of such retainage.

6. **Reporting & Audits:**

A. Urban Peak shall provide, or cause the Project contractors to provide, to the City Auditor documentation of expenditures for the Project, in form and detail sufficient to enable the Auditor to perform his or her responsibilities under the Charter and ordinances of the City. Such documentation may include, without limitation, the information contained within and used as the basis of the Quarterly Progress Reports. Such documentation shall include periodic invoices

evidencing the work performed and the payroll reporting requirements contained in Section 20-76(d), DRMC.

B. 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 Urban Peak's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Urban Peak 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 audits pursuant to this paragraph shall require Urban Peak to make disclosures in violation of state or federal privacy laws. Urban Peak shall at all times comply with 20-276, DRMC.

C. Urban Peak agrees to maintain its files relating to the Proceeds for the Project and expenditures therefore for the life of the Bonds issued to make the Proceeds available for the Project, plus three (3) years, and to make such files available to the City if the City is audited by the Internal Revenue Service and requests such files in order to respond to such an audit.

7. **Term; Termination; Remedies:**

A. The term of this Agreement shall commence on the date this Agreement is executed by the City and shall terminate upon the Notice of Final Acceptance issued as provided in Section 5.Y, above, and except for the financial obligations of Urban Peak set forth in Section 8, below, which shall continue until the City and Urban Peak mutually agree that these obligations are satisfied; provided, however, termination of this Agreement may occur as provided in this Section 7.

B. This Agreement may be terminated as follows:

1. In the event that Urban Peak shall default or breach, on its part, in the performance or fulfillment of one or more material terms or conditions of this Agreement ("**Urban Peak Default**"), and shall fail to cure such Urban Peak Default within ninety (90) days

following delivery of written notice from the Executive Director to Urban Peak specifying the Urban Peak Default, the Executive Director may, in the Executive Director's reasonable discretion, terminate this Agreement. If the Executive Director decides to terminate the Agreement upon an Urban Peak Default not being cured by the cure deadline date, then the Executive Director shall so notify Urban Peak that the provisions of sub-subsection 7.B.5 below shall be effective on the termination date. The failure of SPE to be continued to be affiliated with and controlled by Urban Peak for any reason whatsoever, without the prior written consent of the City, shall be considered to be an Urban Peak Default hereunder. Except as set forth in Section 36 below, SPE's conveyance of ownership of the Property, for any reason whatsoever, without the prior written consent of the City shall be considered to be an Urban Peak Default hereunder.

2. In the event that the City shall default or breach, on its part, in the performance or fulfillment of one or more material terms or conditions of this Agreement (“**City Default**”) and shall fail to cure such City Default within ninety (90) days following delivery of written notice from Urban Peak to the Executive Director, Urban Peak may, in its reasonable discretion, terminate this Agreement. If Urban Peak decides to terminate the Agreement upon the City Default not being cured by the cure deadline date, then Urban Peak shall so notify the Executive Director that the provisions of sub- subsection 7.B.5 below shall be effective on the termination date.

3. Upon mutual agreement of the Parties, the time to cure any Urban Peak Default or City Default may be extended to a date certain and the manner and extent of cure may be modified. The deadline for any cure under this subsection 7.B shall not excuse the obligation of any defaulting Party to take timely and proper action to prevent, stop, mitigate, or alleviate any recent or impending damage to Project property, including the Property, or any existing or imminent threat to public health and safety.

4. Upon mutual written consent, the City and Urban Peak may terminate this Agreement, with or without cause. A failure or refusal to mutually approve and execute the Operating Agreements concurrently to this Agreement shall allow either Party to terminate this Agreement for cause.

5. In the event of a termination of this Agreement, the City shall be entitled to seek recoupment of all Proceeds that the City has provided to Urban Peak hereunder which, to the extent not otherwise voluntarily provided by Urban Peak, may be enforced and

collected by the City in accordance with any remedy available in either law or equity. Upon Urban Peak's payment of the above-referenced recoupment of Proceeds to the City, the Property shall be released of any obligation under the Operating Agreements, and this Agreement shall terminate and be of no further force nor effect. Nothing contained herein shall relieve Urban Peak of its reporting and audit obligations detailed in Section 6, above. True and correct copies of all audits and reports detailed in Section 6, above, related to the use of Proceeds for the Project shall be immediately turned over to the City upon termination of this Agreement, with any supplemental material to be immediately provided to the City from Urban Peak in the event that any Proceeds were used by Urban Peak past the effective date of termination of this Agreement.

6. The Parties agree that this Agreement may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, including actual damages, costs, expenses and attorney's fees (and including any obligations of Urban Peak that are specified under Section 5 of this Agreement to survive termination), as may be available according to the laws and statutes of the State of Colorado. No provision of this Agreement may be enforced by the creation or recording of any type of lien against real property owned by the City, nor may any foreclosure process be utilized to recover any moneys owed by the City to Urban Peak.

8. **Funding:**

A. The City shall provide to Urban Peak funds to offset the Shelter Facility portion of the Project Costs in an amount not to exceed the Proceeds. Any cost of the Project in excess of the Proceeds shall be paid by Urban Peak, at its sole obligation. Notwithstanding any provision of this Agreement to the contrary, Urban Peak agrees that the rights and obligations of the City under this Agreement are contingent upon all funds necessary for Project work or expenditures contemplated under this Agreement being budgeted, appropriated and otherwise made available by the City. Urban Peak acknowledges that this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City, except to the extent that capital improvement funds that are lawfully appropriated can be lawfully carried over to subsequent years.

B. In no case shall the City's financial obligation under this Agreement exceed the Proceeds. This Agreement shall require approval of Denver City Council, as well as any subsequent proposal and amendment. Any amendment shall be approved and executed in the same manner as this Agreement.

C. Notwithstanding any provision of this Agreement to the contrary, the City agrees that the rights and obligations of Urban Peak under this Agreement are contingent upon all funds necessary for Project work or expenditures contemplated under this Agreement, including any funding for the Project that are required to be obtained by Urban Peak from any non-Proceeds sources, being obtained and approved by Urban Peak prior to the beginning of the design and construction phases as set forth in **Exhibit A**, and, to the extent that the City has approval authority over such phases, such approval shall not be unreasonably withheld.

D. The Parties shall cooperate to budget for each phase of Project work in order to proactively manage costs and avoid overruns. In the event there are cost overruns to approved budgets, and subject to the limitations under Section 8.A, the Parties shall negotiate in good faith to address any Project financial shortfalls or overruns. In no event shall the City be required to fund the Project beyond the Proceeds.

9. **Title**: All right, title and interest in the improvements made a part of the Project upon its completion of construction, as approved and accepted by the City, shall be owned by Urban Peak or the SPE, except as may otherwise be provided in the Operating Agreements or as set forth in Section 36 below. In accordance with Section 23, below, Urban Peak and SPE shall execute such further or additional documents as may be needed or requested by the City to effectuate such right, title and interest.

10. **No Discrimination in Employment**: In connection with the performance of work under the Agreement, Urban Peak may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. Urban Peak shall require its contractor(s) insert the foregoing provision in all subcontracts.

11. **Limitation on Application of Agreement**: The provisions of this Agreement are intended to govern the commencement and completion of the Project and shall not be construed to prohibit, limit, waive, or modify other agreements between the Parties currently existing or entered in the future including, without limitation, the Operating Agreements.

12. **Notices**: Any notices, responses, or communications given hereunder may be personally delivered or sent by first class mail, addressed to the following:

To the City:

City and County of Denver Bond Program
Project Implementation Project Manager
201 West Colfax Avenue, Dept. 506
Denver, CO 80202

Executive Director and Chief Housing Officer
Department of Housing Stability
City and County of Denver
201 West Colfax Avenue, Dept. 208
Denver, Colorado 80202

Denver City Attorney's Office
1437 Bannock Street, Room 353
Denver, CO 80202

To Urban Peak:

Chief Executive Officer
Urban Peak
2100 Stout Street
Denver, CO 80205

To SPE:

The Peak, Inc.
c/o Urban Peak
2100 Stout Street
Denver, CO 80205

The contacts and addresses specified above may be changed by the Parties at any time upon written notice to the other Party.

13. **Conflict of Interest**: The Parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the Project or related services or property described herein.

14. **No Third-Party Beneficiaries**: The Parties expressly agree 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 Parties; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such agreements. The Parties expressly agree that any person or entity other than the Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

15. **Subject to Local Laws; Venue:** Each and every term, provision or condition herein is subject to and shall be construed in accordance with the provisions of Federal law, Colorado law, the Charter and Municipal Code of the City and County of Denver, and the applicable ordinances, regulations, executive orders, or fiscal rules, enacted or promulgated pursuant thereto. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

16. **Execution of Agreement:** This Agreement is expressly subject to and shall not be or become effective or binding on the Parties until fully executed by all appropriate signatories of the City and Urban Peak.

17. **Legal Authority:** The Parties each represent that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

18. **[Reserved]**

19. **Authority of Urban Peak:** The scope of authority that Urban Peak may exercise with respect to the Project shall be as expressly delegated, assigned, or allowed under, or necessarily implied in, this Agreement. Urban Peak shall have no authority to avoid, modify or waive any applicable City ordinances or regulatory requirements enacted or adopted under the City's police or taxing powers. Urban Peak has no authority to obligate the City to any contract or agreement with third parties without the City's consent. This Agreement is not intended, nor shall this Agreement be construed, to establish or constitute a joint venture between the City and the Urban Peak Entities.

20. **Financial Interests:** The Parties agree and covenant that any third-party financial interests created in, or used to secure financing and payment for the costs of, any work performed under this Agreement, including but not limited to any bonds (including, without limitation, the Bonds), certificates of participation, purchase agreements, and Uniform Commercial Code filings shall expressly exclude, and not encumber, property title, rights and interests held by the City from such debt or financial security contained in such financial instruments. To effectuate the foregoing, unless otherwise approved in advance by the City, all such documentation entered into by Urban Peak relating to such third-party financial interests shall include the following language: "The security interests created herein are expressly subordinate to the property title, rights and interests held by the City that are senior and superior to that of the [LENDER] hereunder." The terms and

conditions of this Agreement must be expressly recognized in any such third-party financial instrument(s), which must specifically acknowledge and affirm that any third-party financial interests created by the financial instrument(s) are subordinate to the Operating Agreements.

21. **Non-Waiver**: No Party shall be excused from complying with any provision of this Agreement by the failure of the other Party to insist upon or to seek compliance. No assent expressed or implied, to any failure by a Party to comply with a provision of this Agreement shall be deemed or taken to be a waiver of any other failure to comply by said Party.

22. **Conflict of Waiver**: Urban Peak agrees that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein, and Urban Peak furthers agree not to hire or contract for services any official, officer or employee of the City or any other person which would be in violation of the DRMC Chapter 2, Article IV, Code of Ethics, as amended, or City Charter provisions 1.2.9 and 1.2.12.

23. **Further Assurances**: From time to time, upon the reasonable request of a Party, the other Parties agrees to make, execute and deliver or cause to be made, executed and delivered to the requesting Party any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the requesting Party, be necessary or desirable in order to effectuate, complete or perfect the rights of said Party under this Agreement, provided said requesting Party is currently in full compliance with the provisions of this Agreement and has tendered or offered to tender any reciprocal instruments, certificates and documents to which the other Parties are entitled under the Agreement.

24. **Contracting or Subcontracting**:

A. The authority delegated under this Agreement shall not be construed to grant Urban Peak the right or power to bind, or to impose any liability upon, the City through any contracts or agreements Urban Peak may make, unless the prior, written approval of the Manager is obtained, and the contract or agreement is approved and executed in accordance with applicable law. Likewise, the City shall have no authority to bind, or to impose liability upon, Urban Peak through any contracts or agreements the City may make, unless the prior, written approval of Urban Peak is obtained.

B. Any work that is allowed to be contracted or subcontracted under this Agreement shall be subject, by the terms of the contract or subcontract, to every provision of this Agreement. Compliance with this provision shall be the responsibility of the Party who entered

into the contract or authorized the subcontract. The City shall not be liable nor have a financial obligation to or for any contractor, subcontractor, supplier, or other person or entity with which Urban Peak contracts or has a contractual arrangement.

25. **Claims**: In the event that any claim, demand, suit, or action is made or brought in writing by any person or entity against one of the Parties related in any way to this Agreement, the Party in receipt of same shall promptly notify and provide a copy of said claim, demand, suit, or action to the other Parties.

26. **Entire Agreement**: This Agreement, including the exhibits which are hereby incorporated into this Agreement by reference, constitutes the entire agreement of the Parties regarding the Project. The Parties agree there have been no representations, oral or written, other than those contained herein and that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another. If any of the incorporated exhibits conflict with the terms and provisions of this Agreement, the terms and provisions of this Agreement shall control.

27. **No Assignment or Delegation**: No Party shall assign its rights or delegate its duties hereunder, with the exception of contracting and subcontracting as provided in this Agreement, without the prior written consent of the other Parties. Notwithstanding the foregoing, SPE may assign its rights or delegate its duties hereunder to a NMTC Mortgagee, as defined in Section 36, below, without the prior written consent of the City if the SPE conveys its ownership of the Property to such NMTC Mortgagee, all as further described in Section 36, below.

28. **Severability**: Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the Parties shall forthwith enter into good faith negotiations and due diligence to draft a legal term or condition that will achieve the original intent and purposes of the Parties hereunder.

29. **Amendment**: Except as otherwise expressly provided in this Agreement, including but not limited to Section 33.D below, this Agreement may be amended, modified, or changed, in whole or in part, only by written agreement executed by the Parties in the same manner as this Agreement.

30. **Headings for Convenience**: Headings and titles contained herein are intended for the convenience and reference of the Parties only and are not intended to combine, limit, or describe the scope or intent of any provision of this Agreement.

31. **Counterparts of Agreement:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement, and all of which, taken together, shall constitute one and the same document.

32. **Defense & Indemnification:**

A. Urban Peak hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and 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 Urban Peak or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

B. Urban Peak's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Urban Peak’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of Claimant’s damages.

C. Urban Peak will defend any and all Claims which may be brought or threatened against City and will pay on behalf of 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 City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of Urban Peak under the terms of this indemnification obligation. Urban Peak 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.

33. **Operating Agreements:**

A. The Parties agree and acknowledge that this Agreement is intended to control the design and construction of the Project, and the Operating Agreements are intended to control the ongoing operation, maintenance and administration of the Project after construction is completed. To the greatest extent possible, this Agreement and the Operating Agreements are intended to be interpreted as complementary to one another. Nothing contained herein shall be construed as limiting or waiving any rights or obligations described in the Operating Agreements.

B. The concurrent approval and mutual execution of the Operating Agreements to this Agreement shall be a material consideration for the Parties to enter into this Agreement, and the failure or refusal of the Parties to mutually execute the Operating Agreements shall be grounds for terminating this Agreement, in accordance with Section 7, above.

C. Urban Peak agrees that, as a condition of Urban Peak receiving the first disbursement of Proceeds, Urban Peak shall record the Covenant in the real property records for the City and County of Denver. For purposes of this Section 33.C, any capitalized terms that are not otherwise defined in this Agreement shall have the meaning ascribed in the Covenant. Urban Peak must record the Covenant prior to any transfer of the Property to the SPE. The Covenant shall constitute a covenant running with the land and encumber the Property for sixty (60) years from the recording of the Covenant in the Real Property Records (“**Covenant Term**”) in two phases. In accordance with the Covenant, the Shelter Facility shall contain a minimum number of one hundred and thirty-six (136) shelter beds from the time period beginning as of the date of recording of the Covenant in the Real Property Records and ending on the later of: (i) twenty (20) years from the date the Covenant is recorded; or (ii) the Bonds are repaid or are no longer outstanding (“**Shelter Phase**”). For the balance of the Covenant Term after the Shelter Phase is complete, the Shelter Facility may be used as a non-congregate/congregate shelter facility and/or affordable housing described as the “Affordable Housing Phase.” Any use conversion to the Affordable Housing Phase will require the consent of the Executive Director as further specified in the Covenant.

D. The Operating Agreements may be subject to further amendment, restatement or revision without further requiring an amendment to this Agreement, provided that such amendment, restatement or revision to the Operating Agreements does not materially affect any rights or obligations of the Parties hereunder.

E. Urban Peak agrees that it shall be a condition precedent to the City providing any Proceeds to Urban Peak that Urban Peak provide evidence satisfactory to the City that it has funded an operating reserve in the amount of **Five Million Dollars and No Cents (\$5,000,000.00)** in a Federal Deposit Insurance Corporation-insured bank account or other lawful repository account for the purpose of funding Shelter Facility operations and minimizing funding gaps during the operation of the Project, all as further described in the Operating Agreements.

F. The Executive Director is hereby authorized to execute the Covenant and Shelter Operating Agreement on behalf of the City, in addition to any amendments, modifications, or revocations thereof.

34. **Shelter Use of Project:** Notwithstanding anything else contained herein, including the terms and provisions of the Operating Agreements detailed in Section 33, above, Urban Peak hereby agree that it will continue to maintain the Shelter Facility on the Property during the Shelter Phase of the Covenant Term, in addition to any Non-Shelter Facility. Without limiting the foregoing, of the total Sixty-Six Thousand, Five Hundred and Seventy-Eight Square Feet (66,578) at the Property, a minimum of Forty-One Thousand, Twenty Square Feet (41,020) shall be devoted to the Shelter Facility at the Property in accordance with the Operating Agreements. The Executive Director, upon consultation with the City's Department of Finance, shall provide written notice to Urban Peak when such limitation of use of the Property has terminated. Without limiting the foregoing, it is the expectation of the City that the Bonds will be fully paid off no later than August 1, 2027; such Bond maturity date may be subject to change.

35. **Electronic Signatures and Electronic Records:** Urban Peak 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.

36. **NMTC Financing:** Notwithstanding anything in this Agreement to the contrary, the City acknowledges and agrees that the SPE shall have the right to mortgage its fee interest in

the Property or enter into a negative pledge agreement (each such encumbrance, for purposes of this Agreement, referred to herein as a "**Mortgage**") with respect to its interest in the Property for purposes of securing the NMTC Financing, all in accordance with the terms and conditions of this Section 36. The holder of any such Mortgage shall hereinafter be referred to as a "**NMTC Mortgagee**." Except as otherwise approved by the City, such mortgages or similar instruments shall be expressly subject to the terms, covenants, and conditions of this Agreement. Should Urban Peak (or the SPE) be in default in respect of any of the provisions of this Agreement, a NMTC Mortgagee shall have the right, but not the obligation, to cure such default, and City shall accept performance by or on behalf of the NMTC Mortgagee as though, and with the same effect as if, it had been done or performed by Urban Peak or the SPE. Upon compliance with the foregoing, as determined in the sole discretion of the City, any notice of City advising of any such default shall be deemed rescinded and this Agreement shall continue in full force and effect. The City's prior consent shall not be required for a NMTC Mortgage or any nominee, assignee or other party designated by a NMTC Mortgagee to become the owner of the Property upon the exercise of any remedy provided for in a Mortgage (or upon the assignment of the fee interest in lieu of the exercise of any such remedy), and no conveyance of Urban Peak's or the SPE's interest to a NMTC Mortgagee or any nominee, assignee or other party designated by a NMTC Mortgagee shall constitute a default under this Agreement or cause an automatic termination under this Agreement; provided that before any sale of the interest, whether under power of sale or foreclosure, the NMTC Mortgagee shall give to the City notice of the same character and duration as is required to be given to Urban Peak or the SPE pursuant to a Mortgage. If a NMTC Mortgagee or any party designated by a NMTC Mortgagee shall either become the owner of the Property upon the exercise of any remedy provided for in a leasehold mortgage or otherwise, then, notwithstanding anything in this Agreement to the contrary, the NMTC Mortgagee or such person or other entity: (a) shall have the right to assign the interest to any other person without City's consent at any time thereafter, provided such assignee expressly assumes the obligations of Urban Peak and the SPE hereunder and the City is added as an express intended third-party beneficiary to such assignment, and (b) shall have the right to sublet all or a portion of the Property, without City's consent, in each case for use consistent with the Covenant. If a NMTC Mortgagee or any nominee thereof succeeds to Urban Peak's or the SPE's interest in the Property, the City agrees to look solely to such interest in this Agreement, and shall never seek to recover against any other assets of the NMTC Mortgagee

or such nominee unless such recovery is pursuant to a separate agreement between the City and the NMTC Mortgagee or such nominee. Notwithstanding the foregoing, any assignee or successor to Urban Peak's or SPE's interest in the Property shall expressly assume the obligations and responsibilities set forth in the Agreement and each of the Operating Agreements during its period of ownership or possession.

37. **SPE Covenants**: The SPE hereby covenants and affirms that it acknowledges the rights and obligations of Urban Peak and the City herein and that any transfer of the Property hereunder shall be expressly subject to the terms of the Operating Agreements, including any transfer to a NMTC Mortgagee. Any encumbrance placed upon the Property by the Urban Peak Entities or a NMTC Mortgagee shall be subordinate to the terms and conditions of the Covenant and any rights or interests of the City detailed in this Agreement and the Operating Agreements.

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Signature Pages and Exhibits Follow

**Urban Peak Denver d/b/a Urban Peak,
a Colorado non-profit organization**

By: Christina Carlson

Name: Christina Carlson

Title: Chief Executive Officer

**The Peak, Inc.,
a Colorado non-profit organization**

By: Christina Carlson

Name: Christina Carlson

Title: Chair of the Board

City Signature Page and Exhibits to Follow

Contract Control Number: HOST-202265966-00
Contractor Name: URBAN PEAK DENVER

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:

HOST-202265966-00
URBAN PEAK DENVER

By: *See Attached Signature Page*

Name: Christina Carlson
(please print)

Title: Chief Executive Officer
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Exhibit A



URBAN PEAK MOTHERSHIP
1630 S. ACOMA ST.
DENVER, CO 80223

4/22/22 - ADDENDUM 01/GMP SET

PROJECT TEAM

ARCHITECT OF RECORD CHUCK HILL DESIGN SHIPWORKS ARCHITECTURE 301 W. 45TH AVE DENVER, CO 80216 303.433.4094	CIVIL ENGINEER STE JAVINI WARE HULLCUMB 2812 S. BROADWAY, STE 250 DENVER, CO 80209 303.980.1576	LANDSCAPE ARCHITECT CHRISTOPHER NEET FLOW DESIGN COLLABORATIVE 301 W. 45TH AVE DENVER, CO 80216 303.492.1975	STRUCTURAL ENGINEER SHAY KACZ MEG CORP 1400 S. CLARK ST, STE 101 DENVER, CO 80210 303.853.4027	MECHANICAL ENGINEER BRITNEY WILSON MEC INC 4040 PECOS ST UNIT F DENVER, CO 80211 303.960.4026	ELECTRICAL ENGINEER MARCUS WHELAN MW CONSULTING INC 4040 PECOS ST UNIT F DENVER, CO 80211 303.525.3271	PLUMBING ENGINEER BRITNEY WILSON MEC INC 4040 PECOS ST UNIT F DENVER, CO 80211 303.960.4026	ENERGY CONSULTANT MICHAEL LEWIS GROUP 14 ENGINEERING, PBC 1325 S. 15TH AVE DENVER, CO 80216 303.890.2076	GENERAL CONTRACTOR SHANE SPORTEL GENERAL CONSTRUCTION SERVICES 2344 SPRUCE ST, STE 28 BOULDER, CO 80502 303.515.2230
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Urban Peak - Acoma

4/22/2022

CONCEPTUAL PROGRAM

PERCENT of TTL	Rooms	Beds	Name	Av NLA	QTY	TTL	Balcony	TTL	NOTES
12.5%	4	32	Youth Shelter	8,311	1	8,311	0	0	
12.5%	3	20	Minors Shelter	3,561	1	3,561	0	0	
25.0%	5	10	Neighborhood 1 / 4	3,923	2	7,846	0	0	
25.0%	7	14	Neighborhood 2 / 5	4,703	2	9,406	0	0	
25.0%	9	18	Neighborhood 3 / 6	5,948	2	11,896	0	0	
75.0%	51	136		5,128	8	41,020	0	0	Total

Total Shelter SF	Lvl 2-3					41,020			
Lobbies & Cores	Lvl 1-4					10,219			
Admin	Lvl 4					6,180			
Well-Being Center	Lvl 4					3,933			
GLA						61,352			Parking and Rooftop Terraces not included
Covered Parking	Lvl 1					2,384			
Rooftop Terraces	Lvl 4					2,842			
Balconies						0			
GSF						63,736			Parking included
GBA						66,578			Parking and Rooftop Terraces included

PARKING

Zone District - I-MX-5			Cars Req	Reduction		
(Incidental)	-	Admin, Lobbies & Cores	-	-	-	Areas added to 2 Primary Uses Below
Res Care Type 4	0.250 / 1,000	Shelters	55,984 SF	14.00	Alt ratio 0.125 / 1000	Per Table 10.4.5.2 Shelters
Community Center	0.500 / 1,000	Well-Being Center	5,368 SF	2.68	TOD - subtract 25%	Per Table 10.4.5.3 Multi-modal Transportation
			61,352 SF	16.68		
					Cars Provided	10 Includes 2 Accessible Van Spaces
					Loading Spaces Provided	1

Exhibit A-1

PROJECT BUDGET

Uses	Total Budget	CPF Uses	GO Bond Uses	DOLA Uses	Owner Equity Uses	NMTC Uses
Direct Construction Costs						
Land	\$ -	\$ -				\$ -
Demo	\$ -	\$ -				\$ -
Permits	\$ 108,720.00					\$ 108,720.00
Sewer development and water tap fees	\$ 202,500.00					\$ 202,500.00
Power/Telecom						\$ -
Utility Relocation	\$ 40,000.00					\$ 40,000.00
Architect Design	\$ 630,020.00					\$ 630,020.00
Architect Supervision	\$ 229,280.00					\$ 229,280.00
Construction costs *	\$ 25,114,755.00	\$ 3,000,000.00	\$ 16,764,567.00	\$ 3,780,000.00		\$ 1,570,188.00
FF&E	\$ 1,155,000.00					\$ 1,155,000.00
Contractor estimating contingency	\$ 1,120,407.00					\$ 1,120,407.00
Owner Contingency	\$ 1,806,923.00				\$ 58,562.26	\$ 1,748,360.74
Construction testing	\$ 98,550.00				\$ 98,550.00	
Builders Risk	\$ 102,811.00				\$ 102,811.00	
Construction inspections	\$ 40,000.00				\$ 40,000.00	
Green Building	\$ 12,500.00				\$ 12,500.00	\$ -
Indirect Construction Costs						
BLD Consultant Fee	\$ 1,311,750.00				\$ 1,311,750.00	\$ -
Urban Peak Fee	\$ -				\$ -	\$ -
Third Party Reports						
Environmental Phase 1	\$ 16,500.00				\$ 16,500.00	\$ -
Appraisal	\$ 15,000.00					\$ 15,000.00
Market study	\$ 23,450.00				\$ 23,450.00	\$ -
Geotechnical Report	\$ 11,000.00				\$ 11,000.00	\$ -
Civil Engineering/ALTA	\$ 11,500.00				\$ 11,500.00	\$ -
					\$ -	\$ -
					\$ -	\$ -
Financing Costs						
Bridge Loan Interest	\$ 701,420.00				\$ 701,420.00	\$ -
Construction loan interest after construction	\$ -				\$ -	\$ -
Bridge Loan Fee	\$ 219,689.00				\$ 219,689.00	\$ -
Underwriter Fee	\$ -				\$ -	\$ -
Negative Arbitrage Reserve	\$ -				\$ -	\$ -
Trustee Admin/Legal	\$ -				\$ -	\$ -
Bond Issuer Fees	\$ -				\$ -	\$ -
Rating Agency	\$ -				\$ -	\$ -
Verification Agent	\$ -				\$ -	\$ -
Construction loan fees	\$ -				\$ -	\$ -
Prepaid MIP	\$ -				\$ -	\$ -
Title and Recording	\$ 63,000.00				\$ 50,500.00	\$ 12,500.00
					\$ -	\$ -
Other Costs						
Tax credit fees					\$ -	\$ -
General Liability/Umbrella	\$ 80,000.00				\$ 80,000.00	\$ -
P&P Bond	\$ 172,492.00				\$ 172,492.00	\$ -
CDE Debt Service Reserve	\$ 1,562,469.00				\$ -	\$ 1,562,469.00
Marketing	\$ -				\$ -	\$ -
Relocation	\$ 500,000.00				\$ 500,000.00	\$ -
NMTC Fees	\$ 2,581,000.00				\$ -	\$ 2,581,000.00
Legal - Bond	\$ -				\$ -	\$ -
Legal - permanent loan					\$ -	\$ -
Legal - Construction Loan	\$ 75,000.00				\$ 75,000.00	\$ -
Legal - underwriter	\$ -				\$ -	\$ -
Legal - owner	\$ 125,000.00				\$ 125,000.00	\$ -
Cost certification	\$ -				\$ -	\$ -
Soft cost contingency	\$ 488,000.00				\$ 488,000.00	\$ -
Operating reserve	\$ -				\$ -	\$ -
Lease Up Reserve	\$ -				\$ -	\$ -
Total	\$ 38,618,736.00	\$ 3,000,000.00	\$ 16,764,567.00	\$ 3,780,000.00	\$ 4,098,724.26	\$ 10,975,444.74

Credit Calculation

Eligible Basis	
Applicable Fraction	
Applicable Federal Rate	
Credit Eligible	Basis Cushion
	\$ -
Credit Awarded	
Per Unit	\$ -
Year of Credit	
Credit Percent Sold	
Credit Sales Price	
Credit Sales Proceeds	
Total Funding Required	\$ 38,618,736.00
First Mortgage	\$ -
CDOH Grant	\$ 3,780,000.00
CPF Funds	\$ 3,000,000.00
NMTC Equity	\$ 10,975,444.74
City of Denver Interest Only	\$ 16,764,567.00
GP - Cash Flow Note	\$ -
Deferred	\$ -
Urban Peak Capital Campaign	\$ 4,098,724.26

Exhibit B-1

SHELTER OPERATING AGREEMENT

THIS SHELTER OPERATING AGREEMENT (“**Agreement**”) dated _____, 202_ is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “**City**”) and **URBAN PEAK DENVER**, a Colorado nonprofit corporation, whose address is 2100 Stout Street, Denver, Colorado 80210 (“**Operator**”), collectively the “**Parties**” and each individually a “**Party**.”

RECITALS

WHEREAS, the qualified and registered voters of the City approved referred question 2B on November 2, 2021, approving the issuance of general obligation bonds (the “**Bonds**”) by the City in the aggregate principal amount of \$38,600,000.00 for the purpose of financing the cost of repairs and improvements to the City’s housing and sheltering system.

WHEREAS, the Parties have entered into a Funding and Assignment Agreement (“**FAA**”) whereby the City will provide a part of the Bonds proceeds, totaling an amount not to exceed Sixteen Million Seven Hundred Sixty-Four Thousand Five Hundred Sixty-Seven Dollars and No Cents (\$16,764,567.00) (the “**Proceeds**”), to complete the construction of a structure including at least twenty (20) congregate shelter beds serving minors, thirty-two (32) congregate shelter beds serving transition age youth, and eighty-four (84) non-congregate shelter beds serving minors or transition youth and be a minimum of forty-one thousand twenty (41,020) square feet (the “**Shelter Facility**”), among other services and facilities, located at 1630 South Acoma Street, Denver, Colorado 80210 (the “**Property**”).

WHEREAS, as a condition of receiving the Proceeds, Operator has (i) agreed to enter into this Agreement to memorialize certain operating, maintenance and administration requirements for the Shelter Facility required by the City; and (ii) execute and record or cause to be executed and recorded a Declaration of Restrictive Covenant to restrict the use of the Property for a term of sixty (60) years (“**Covenant**”), in accordance with the terms of said Covenant.

NOW THEREFORE, in consideration of the mutual covenants, undertakings and conditions set forth below, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Standard of Performance**. Operator must (i) operate, maintain, and manage the Shelter Facility in a lawful, satisfactory, and proper manner and (ii) perform or comply with the obligations set forth in this Agreement. Operator must faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature. The City acknowledges and agrees that Operator or an affiliate of Operator may own the Property as of the execution of this Agreement and subsequently transfer title to the Property to a special purpose entity controlled by Operator, and upon such transfer, the special purpose entity will lease the Property to the Operator for the operation and management of the Shelter Facility.

Exhibit B-1

2. **Term.** This Agreement will commence as of the date the Shelter Facility is placed into service and remain in effect until the earlier of (a) the expiration or earlier termination of the Covenant, or (b) the time at which the Shelter Facility is converted in its entirety to affordable housing in accordance with the Covenant (the “**Term**”).

3. **Availability of Shelter Beds.**

3.1 Operator must provide at the Shelter Facility at least twenty (20) congregate shelter beds serving minors, thirty-two (32) congregate shelter beds serving transition age youth, and eighty-four (84) non-congregate shelter beds serving minors or transition youth.

3.2 Operator must make a minimum of eighty percent (80%) of the beds at the Shelter Facility available at any given time for shelter guests. “Available” means that a bed can be occupied by a guest and is not otherwise unavailable for occupancy due to cleaning, turnover, maintenance, or similar activities. Beds that are being cleaned or turned over when a guest vacates the Shelter Facility or is moved to another bed will be considered “available” so long as the beds being cleaned or turned over can be occupied by another guest within twenty-four (24) hours.

3.3 Operator must obtain the written approval from the Executive Director of the City’s Department of Housing Stability (“**HOST**”), or any successor agency or department of the City, prior to converting any room or area being used as non-congregate or congregate shelter within the Shelter Facility to another use.

4. **Staffing Requirements for the Shelter Facility.**

4.1 Operator must have a minimum of three (3) staff members on site and working at the Shelter Facility at all times.

4.2 Operator must employ staff that assists Shelter Facility guests with rehousing. Staff satisfying this requirement may include case managers, housing advocates, or other similar positions so long as the staff member’s responsibilities include assisting Shelter Facility guests with rehousing. Operator must have a minimum ratio of staff focusing on rehousing at the Shelter Facility as follows: if the Shelter Facility serves individuals, there must be a minimum of 1:50 staff-to-guest ratio; if the Shelter Facility serves families, there must be a minimum of 1:40 staff-to-guest ratio; and if the Shelter Facility serves minors and transitional aged youth, there must be a minimum of 1:30 staff-to-guest ratio.

5. **Regular Reporting in Homelessness Management Information System.**

5.1 Operator must report data and information on Shelter Facility utilization and Shelter Facility outcomes in the Homeless Management Information System (“**HMIS**”). **HOST** may modify the data reporting requirements that Operator must submit into the **HMIS**. **HOST** will provide Operator with written notice at least thirty (30) days prior to modifying any **HMIS** reporting requirements.

5.2 It is **HOST**’s policy, in alignment with adopted plans, to require the use of the **HMIS** and OneHome for all federally and locally funded projects that have a goal of addressing

Exhibit B-1

the needs of residents experiencing homelessness. Metro Denver Homeless Initiative (“MDHI”) is the implementing organization for the HMIS.

5.2.1 Operator agrees to fully comply with the rules and regulations, as may be amended, required by the U.S. Department of Housing and Urban Development (“HUD”) which govern the HMIS.

5.2.2 Operator, in addition to the HUD requirements, must conform to the HMIS policies and procedures established and adopted, and as may amended or updated, by the MDHI Continuum of Care. The current policies and procedures are outlined in the COHMIS Policies and Procedures,¹ and the COHMIS Security, Privacy and Data Quality Plan.²

5.2.3 Operator’s aggregate HMIS data may be shared with the funder and the community to improve system performance and assist with monitoring. MDHI will monitor HMIS related compliance and performance on an annual basis through a site visit. HOST will monitor program performance and contract compliance on an annual basis for the Term.

5.2.4 Technical assistance and training resources for the HMIS are available to the Operator via the COHMIS Helpdesk.³

5.2.5 HMIS data will be used to monitor this Agreement. HMIS reports may be sent to HOST directly from MDHI. Operator will also have access to all reports generated for this Agreement. HOST may request aggregate data from MDHI for City-related reporting needs.

6. **Annual Reports to HOST.**

6.1 Operator must submit an annual report to HOST on forms provide by HOST by January 31 of each year this Agreement is in effect. The submission must contain a detailed report containing the following:

6.1.1 Shelter Facility status report;

6.1.2 Compliance reports; and

6.1.3 Any other documentation or information required by the City.

6.2 Operator must submit to HOST by June 30th of each year this Agreement is in effect an audited financial report for the Operator and an audited financial report for the Shelter Facility. The financial reports must be in a form satisfactory to the City.

6.3 Operator acknowledges that untimely submissions of annual reports to HOST will cause the City to incur costs not contemplated by this Agreement. Such costs include, but are not limited to, additional staff time for the administration of this Agreement and to ensure compliance with the Bonds requirements. If Operator fails to timely submit a report required under this Agreement, a per-violation charge of two hundred fifty dollars and NO/100 (\$250.00) will be

¹ <https://cohmis.zendesk.com/hc/en-us/articles/360013991371-Policy-Procedures>

² <https://cohmis.zendesk.com/hc/en-us/articles/360013991371-Policy-Procedures>

³ <https://cohmis.zendesk.com>

Exhibit B-1

imposed upon the Operator, which amount shall be due and payable upon receipt of invoice by the City.

7. **Maintenance of Property; Inspections.**

7.1 Operator must maintain the Property and the Shelter Facility in accordance with the Covenant and in a manner such that all shelter units are suitable for occupancy, taking into account applicable safety and building codes, and otherwise in a manner reasonably satisfactory to HOST.

7.2 For the purpose of ensuring compliance with this Agreement and the Covenant, HOST shall have the reasonable right of access to the Property, without charges or fees, to conduct an inspection to ensure minimum health and safety standards are being met. Operator must remediate any issues or deficiencies identified by HOST within thirty (30) days of receiving written notice.

8. **Examination of Records.** Any authorized agent of the City, including the City Auditor or his or her representative, upon reasonable notice, 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 Operator's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Operator 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 audits pursuant to this paragraph shall require the Operator to make disclosures in violation of state or federal privacy laws. Operator shall at all times comply with D.R.M.C. 20-276.

9. **Status of Operator.** Operator is an independent contractor. Neither Operator nor any of its employees or agents are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

10. **Agreement Creates No Payment Obligation.** Notwithstanding any other provision of the Agreement, the City's maximum payment obligation under this Agreement will not exceed zero dollars (\$0.00) (the "**Maximum Contract Amount**"). The City is not obligated to execute an agreement or any amendments to this Agreement for any services not specified herein. The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by this Agreement irrevocably pledge present cash reserves or payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

Exhibit B-1

11. **No Discrimination in Employment.** In connection with the performance of work under the Agreement, Operator may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. Operator shall insert the foregoing provision in all subcontracts.

12. **No Employment of a Worker Without Authorization to Perform Work Under the Agreement.**

12.1 This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “**Certification Ordinance**”).

12.2. Operator certifies that:

12.2.1 At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.

12.2.2 It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., and confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

12.2.3 It will not enter into a contract with a subconsultant or subcontractor that fails to certify to Operator that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

12.2.4 It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

12.2.5 If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. Operator shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during the three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.

12.2.6 It will comply with a reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

Exhibit B-1

12.3 Operator is liable for any violations as provided in the Certification Ordinance. If Operator violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If this Agreement is so terminated, Operator shall be liable for actual and consequential damages to the City. Any termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Operator from submitting bids or proposals for future contracts with the City.

13. Operator's Insurance.

13.1 **General Conditions:** Operator agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Operator shall keep the required insurance coverage in force at all times during the term of the Agreement, including any extension thereof, and during any warranty period. 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 require 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 Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. 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, Operator 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. Operator 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 Operator. The Operator 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.

13.2 **Proof of Insurance:** Operator may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. Operator certifies that the certificate of insurance attached as **Exhibit A**, preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. 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 Operator'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 additional proof of insurance, including but not limited to policies and endorsements.

13.3 **Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Operator and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

Exhibit B-1

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

13.5 **Subcontractors and Subconsultants:** Operator shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Operator and appropriate to their respective primary business risks considering the nature and scope of services provided.

13.6 **Workers' Compensation and Employer's Liability Insurance:** Operator 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.

13.7 **Commercial General Liability:** Operator shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate. Policy shall not contain an exclusion for sexual abuse, molestation or misconduct.

13.8 **Automobile Liability:** Operator shall maintain Automobile Liability with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

13.9 **Cyber Liability:** Operator shall maintain Cyber Liability coverage with minimum limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. If Claims Made, the policy shall be kept in force, or a Tail policy placed, for three (3) years.

13.10 **Commercial Crime:** Operator shall maintain minimum limits of \$1,000,000 in commercial crime insurance coverage. Coverage shall include theft of City's money, securities or valuable property by Operator's employees, including any extended definition of employee. The City and County of Denver shall be named as Loss Payee as its interest may appear.

14. **Indemnification.**

14.1 Operator agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and 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 Operator or its subcontractors either passive or active, irrespective of

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fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

14.2 Operator's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Operator's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

14.3 Operator shall defend any and all Claims which may be brought or threatened against City and shall pay on behalf of 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 City will be in addition to any other legal remedies available to City and will not be the City's exclusive remedy.

14.4 Insurance coverage requirements specified in this Agreement in no way lessen or limit the liability of Operator under the terms of this indemnification obligation. Operator is responsible to obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

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

15. **Termination; Remedies.**

15.1 If Operator is in breach or default of one more material terms or conditions of this Agreement ("**Operator Default**"), the City will give written notice of the Operator Default to Operator. After Operator's receipt of the written notice, Operator will have sixty (60) calendar days to cure the Operator Default (the "**Cure Period**"). The Cure Period may be extended at the reasonable discretion of the Executive Director of HOST. If the Operator Default is not cured within the Cure Period, the Agreement may be terminated at the sole discretion of the Executive Director of HOST. If the Agreement is terminated pursuant to this subsection, the City shall be entitled to recoup all of the Proceeds that the City provided to Operator under the Funding and Assignment Agreement from Operator upon written demand. To the extent that any portion of the Proceeds are not otherwise voluntarily returned by Operator, the City may collect any amount due and owing to the City in accordance with any remedy available in either law or equity. The City may also exercise any remedies available to it pursuant to the Covenant in the event of an uncured Operator Default.

15.2 Operator may not terminate this Agreement while the Bonds are outstanding.

15.3 The Parties may mutually agree in writing to terminate this Agreement.

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16. **Notices.** All notices required by the terms of this Agreement must be hand delivered, sent by overnight courier service, or mailed by certified mail, return receipt requested, if to Operator at the address aforementioned and to the City at the addresses below:

Executive Director, Department of Housing Stability
201 W. Colfax Ave., Dept. 615
Denver, CO 80202

With a copy to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

17. **Compliance with all Laws.** Operator shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

18. **Severability.** Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

19. **Governing Law; Venue.** The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

20. **Legal Authority.** Operator represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Operator represents and warrants that he or she has been fully authorized by Operator to execute the Agreement on behalf of Operator and to validly and legally bind Operator to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to

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the legal authority of either Operator or the person signing the Agreement to enter into the Agreement.

21. **Use, Possession, or Sale of Alcohol of Drugs.** Operator shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs at the Property and the Shelter Facility. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

22. **Agreement as Complete Integration; Amendments.** This Agreement is the complete integration of all understandings between the Parties as to the subject matter of this Agreement. No prior, contemporaneous, or subsequent addition, deletion, or other modification has any force or effect, unless embodied in this Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of this Agreement or any written amendment to this Agreement will have any force or effect or bind the City. This Agreement may be amended without requiring an amendment to the FAA or the Covenant.

23. **City Execution of Agreement.** This 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.

24. **Funding and Assignment Agreement and Covenant.**

24.1 The Parties agree and acknowledge that this Agreement, along with the Covenant, are intended to control the ongoing operation, maintenance and administration of the Shelter Facility after construction is completed, and the FAA is intended to control the design and construction of the Shelter Facility. To the greatest extent possible, this Agreement, the Covenant and the FAA are intended to be interpreted as complementary to one another. Nothing contained herein shall be construed as limiting or waiving any rights or obligations described in the FAA or the Covenant.

24.2 The concurrent approval and mutual execution of the FAA to this Agreement shall be a material consideration for the Parties to enter into this Agreement, and the failure or refusal of the Parties to mutually execute the FAA shall be grounds for terminating this Agreement, in accordance with Section 15, above.

24.3 Operator's approval, execution and recordation of the Covenant in the real property records shall be a material consideration for the Parties to enter into this Agreement, and the failure or refusal of Operator to lawfully approve, execute and record the Covenant shall be grounds for terminating this Agreement, in accordance with Section 15, above.

25. **Operating Reserve.** Operator agrees that it shall be a condition precedent to the City providing any Proceeds to Operator that Operator provide evidence satisfactory to the City that it has funded an operating reserve in the amount of Five Million Dollars and No Cents (\$5,000,000.00) in a Federal Deposit Insurance Corporation-insured bank account for the purpose of funding shelter operations and minimizing funding gaps during the operation of the Shelter Facility (the "**Operating Reserve**"). The City shall not have approval rights for disbursements

Exhibit B-1

from the Operating Reserve. Operator shall provide an annual report to the City by January 31 of each year that this Agreement remains in effect, in a form approved by the City detailing on both a cumulative and a prior-fiscal year basis (i) disbursements from the Operating Reserve; (ii) use of funds; and (iii) the remaining Operating Reserve balance at the end of such reporting period.

26. **Future Operation Funding.** It is anticipated that Operator may apply to a future notice of funding availability issued by HOST for the provision of funds to support shelter operations for the Shelter Facility at a future date. Operator acknowledges and agrees that any City funding for an operating gap is not currently budgeted by the City, will not be provided out of any Proceeds, and a future award, if any, will be contingent on Operator's successful competitive bid and the availability of funds. To the extent not provided by the City, any funding needed by Operator for the operating gap shall be the sole responsibility of Operator.

27. **Electronic Signatures and Electronic Documents.** The Operator consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, 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.

28. **Third Parties' Right to Cure; Acceptance by City.** Except as otherwise approved by the City, any mortgages or similar instruments recorded on the Property shall be expressly subject to the terms, covenants, and conditions of this Agreement. Should Operator be in default in respect of any of the provisions of this Agreement, a lender or an owner of the Property shall have the right, but not the obligation, to cure such default, and City shall accept performance by or on behalf of the lender or owner of the Property as though, and with the same effect as if, it had been done or performed by Operator. Upon compliance with the foregoing, any notice of City advising of any such default shall be deemed rescinded and this Agreement shall continue in full force and effect.

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Exhibit B-1

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

CITY

CITY AND COUNTY OF DENVER, a Colorado municipal corporation

By: _____

Title: _____, Department of Housing Stability

Exhibit B-1

OPERATOR

Urban Peak Denver, a Colorado non-profit corporation

By: _____

Title: _____

Exhibit B-2

Upon Recordation, Return To:
Executive Director and Chief Housing Officer
Department of Housing Stability
City and County of Denver
201 West Colfax Avenue, Dept. 208
Denver, Colorado 80202

DECLARATION OF RESTRICTIVE COVENANT AGREEMENT

This **DECLARATION OF RESTRICTIVE COVENANT AGREEMENT** (“**Covenant**”) is made as of this _____ day of _____, 202_, by **Urban Peak Denver**, a Colorado non-profit corporation (“**Property Owner**”) and the **City and County of Denver**, (“**City**”), each a “**Party**” and collectively the “**Parties**,” with reference to the following facts:

RECITALS

WHEREAS, Property Owner is the owner of certain real property located at 1630 South Acoma Street, Denver, Colorado (“**Property**”). The legal description of the Property is attached hereto as **Exhibit A** and is incorporated by reference herein.

WHEREAS, the qualified and registered voters of the City and County of Denver, Colorado (“**City**”) approved referred question 2B on November 2, 2021, approving the issuance of general obligation bonds (the “**Bonds**”) by the City in the aggregate principal amount of \$38,600,000.00 for the purpose of financing the cost of repairs and improvements to the City’s housing and sheltering system.

WHEREAS, Property Owner intends to complete the construction of a structure that will contain at least twenty (20) congregate shelter beds serving minors, thirty-two (32) congregate shelter beds serving transition-age youth, and eighty-four (84) non-congregate shelter beds serving minors or transition-age youth (“**Shelter Facility**”) located on the Property. The Shelter Facility shall consist of a minimum of Forty-One Thousand, Twenty Square Feet (41,020) square feet of the structure on the Property.

WHEREAS, on _____ date of _____ in 202_, City, Property Owner and The Peak, Inc., executed a Funding and Assignment Agreement (as may be amended from time to time, the “**Funding and Assignment Agreement**”), accepting an award of not more than \$16,764,567 in Bond funds (“**Proceeds**”) to offset capital improvement costs associated with the design and construction of the Shelter Facility.

WHEREAS, Urban Peak and City subsequently entered into a Shelter Operating Agreement dated _____, 202_, (as may be amended from time to time, the “**Shelter Operating Agreement**”) that established additional terms and conditions of Urban Peak’s receipt of the Proceeds and sets forth Urban Peak’s obligations and responsibilities in return for receipt of the Proceeds, which is incorporated herein by reference.

WHEREAS, as a condition of Urban Peak receiving the Proceeds, Property Owner agrees to encumber the Property with a restrictive covenant that will require the Shelter Facility be used as a Shelter Facility or Affordable Housing (as such term is defined in Section 1(b)(i) below) for a

period of sixty (60) years from the date of recordation of this Covenant in the real property records of the Clerk and Recorder for the City (“**Real Property Records**”);

WHEREAS, Property Owner has agreed that in return for Urban Peak’s receipt of the Proceeds Property Owner will: 1) coordinate with Urban Peak to build and maintain the Shelter Facility, and 2) coordinate with Urban Peak to maintain and operate the Shelter Facility for at least twenty (20) years from the date of recordation of this Covenant in the Real Property Records or until such time as the Bonds are no longer considered to be outstanding and payable for the City, whichever is later (“**Shelter Phase**”).

WHEREAS, after the Shelter Phase is complete, Property Owner agrees that the Property will continue to be encumbered with this Covenant, as described below, for the balance of time between the expiration of the Shelter Phase and sixty (60) years from the date of recordation of this Covenant in the Real Property Records.

WHEREAS, Property Owner now desires to record this Covenant against the Property, which will subject the Property to certain restrictions on use consistent with the Shelter Operating Agreement or any amendments thereto, the Funding and Assignment Agreement, or this Covenant (collectively the “**Agreements**”), and as more particularly set forth below.

NOW, THEREFORE, City and Property Owner hereby declares that the following express covenants are to be taken and construed as running with the Property and, except as set forth below, shall pass to and be binding upon Property Owner and its successors, assigns, heirs, grantees or lessees to the Property or any part thereof from the date of recordation of this Covenant in the Real Property Records and shall continue for sixty (60) years from the recording date of this Covenant in the Real Property Records. Each and every contract, deed, lease or other instrument covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to the covenants and restrictions detailed in this Covenant regardless of whether such covenants and restrictions are set forth in such contract, deed, lease or other instrument.

1. **Restrictions Affecting the Property**. Property Owner hereby agrees to the below restrictions for sixty (60) years from the recording of the Covenant in the Real Property Records in two phases:

(a) **The Shelter Phase**: The Shelter Facility shall be used solely and exclusively as a Shelter Facility as described above during the Shelter Phase for the later of: 1) twenty (20) years from the date of recordation of this Covenant in the Real Property Records; or 2) until such time as the Bonds are no longer considered to be outstanding and payable for the City. This Shelter Phase is more particularly described as:

(i) Property Owner hereby agrees that its use and operation of the Shelter Facility shall be limited as a congregate/non-congregate shelter for so long as the Bonds remain outstanding and payable for the City or twenty (20) years, whichever date is later. The Executive Director of the City’s Department of Housing Stability (“**Department of Housing Stability**”) (along with the executive director of any successor City agency or department to the Department of Housing Stability, “**Executive Director**”), upon

consultation with the City's Department of Finance ("**Department of Finance**"), shall provide written notice to Property Owner when such limitation of use of the Shelter Facility can be terminated or amended. Without limiting the foregoing, it is the expectation of the City that the Bonds will be fully paid off no later than August 1, 2027; such Bond maturity date may be subject to change. During the Shelter Phase, Property Owner agrees to operate the congregate/non-congregate in the following manner:

(ii) The Shelter Facility shall consist of a minimum of Forty-One Thousand, Twenty Square Feet (41,020) square footage on the Property comprising of at least twenty (20) congregate shelter beds serving minors, thirty-two (32) congregate shelter beds serving transition-age youth, and eighty-four (84) non-congregate shelter beds serving minors or transition-age youth. The Property may contain additional space dedicated to other activities and services so long as the Shelter Facility is maintained in accordance with the Agreements.

(b) The Affordable Housing Phase: After the Shelter Phase is completed and with the approval specified in subsection 1(b)(ii) below, the Property may enter the Affordable Housing Phase for the balance of time between the termination of the Shelter Phase and sixty (60) years from the recording date of the Covenant in the Real Property Records (the "**Affordable Housing Phase**").

(i) During the balance of time between the conversion of the Shelter Phase and sixty (60) years from the recording date of the Covenant in the Real Property Records, Property Owner may expand the use of the Shelter Facility to include affordable housing purposes (as such terms may be negotiated between the City and Property Owner, "**Affordable Housing**"). The transitioned use of the Shelter Facility to Affordable Housing during the Affordable Housing Phase will be memorialized in one or more agreements to be negotiated and executed between the Parties at the time of transition as described below.

(ii) In order to transition the use of the Shelter Facility to Affordable Housing from the Shelter Phase to the Affordable Housing Phase, the Executive Director, after consultation with the Department of Finance, will provide notice to Property Owner in writing that: 1) the Bonds are no longer outstanding, 2) at least twenty (20) years have passed since the recordation of this Covenant in the Real Property Records, and 3) the Shelter Phase can be converted to the Affordable Housing Phase. Subsequently, Property Owner may submit a request in writing to the City requesting that the Property convert to the Affordable Housing Phase with a detailed explanation of how the Affordable Housing project for the Property will be organized, the effect that any Affordable Housing project will have on the Shelter Facility or a portion thereof, and how that Affordable Housing project is or will be in compliance with the Department of Housing Stability's then-current 5-year Strategic Plan. Any use conversion of the Shelter Facility or a portion thereof from a Shelter Facility to Affordable Housing will require a written agreement authorized by the Executive Director with the consent of the Director of Finance mutually-signed by the Parties, or the Parties' heirs, successors and assigns, as appropriate; such agreement may be required to be executed in accordance with the Charter and Revised Municipal Code of the City, respectively. Notwithstanding any other provisions described herein, the Parties acknowledge that during the Affordable Housing Phase, all or a portion of the Shelter

Facility can continue to operate as a Shelter Facility.

2. **Restrictions Run with the Land.** Property Owner intends that the provisions set forth herein are covenants which shall run with the land and be binding upon Property Owner, its heirs, successors and assigns, including lessees or other users of the Property including, specifically and without limitation, Urban Peak (collectively, “Users”). Should it be determined that any restrictions contained herein are not covenants which run with the land, Property Owner intends that these provisions are equitable servitudes which run with the land and are binding upon all Users. Property Owner also intends that the provisions set forth herein may be enforced by the City against Users even if Property Owner does not own property which is benefited by these provisions. Should any portion of this Covenant be held to be unenforceable, all of the other and remaining portions shall remain binding and enforceable. Should any portion of the Covenant be held to not run with the land, all of the other and remaining portions shall continue to run with the land.

3. **Irrevocability of Covenant.** Property Owner acknowledges that this Covenant is for the benefit of the public and that the Executive Director is the party designated to act on behalf of the City regarding the matters set forth herein. Therefore, unless otherwise confirmed by the City in writing, only the Executive Director is able to alter, quit claim, or release this Covenant prior to its natural expiration. Thus, the Covenant may not be revoked, or materially modified or amended, by Property Owner during the Term of the Covenant hereof (as that term is defined in Section 6 below) without the prior written consent of the Executive Director or any designee or successor officer of the Executive Director.

4. **Maintenance.** Property Owner agrees to maintain all interior and exterior improvements, including landscaping, of the Shelter Facility in good condition, repair and sanitary condition (and, as to landscaping, in a healthy condition) and in accordance with any management and operations plan in full compliance with the Agreements, as the same may be amended from time to time, and all other applicable laws, rules, ordinances, orders, and regulations of all federal, State of Colorado (“State”), City, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. Property Owner acknowledges the great emphasis the City places on quality and to provide quality services to eligible participants to ensure compliance with the Agreements. In addition, Property Owner shall keep the Shelter Facility free from all graffiti and any accumulation of debris or waste material and shall promptly eliminate all graffiti and replace dead and diseased plants and landscaping with comparable approved materials. Property Owner shall keep and maintain the Shelter Facility and the Property fit for the purposes for which they are intended. Property Owner shall promptly make all repairs and replacements necessary to keep the Property in good condition and repair. Property Owner shall carry sufficient insurance to cover the Shelter Facility and any personal property located on the Property per the terms of the Shelter Operating Agreement and any other applicable Affordable Housing agreement(s).

5. **Property Owner’s Rights.** Except for the express restrictions on use of the Property as set forth herein, Property Owner and its successors and assigns shall have all other rights of ownership appurtenant to the Property and the right to exercise same.

6. **Term of the Covenant.** This Covenant shall automatically terminate on the date which is sixty (60) years from the date of the recording of the Covenant in the Real Property Records, if not

earlier terminated by mutual written consent of Property Owner and City (“**Term of the Covenant**”). The Term of the Covenant may be extended upon mutual written agreement of the Parties.

7. **Defaults:** Among others, each of the following shall expressly constitute an “**Event of Default**” by Property Owner under this Covenant if not timely cured or otherwise expressly waived by the City, in the City’s sole discretion:

(a) Failure to timely cure any default contained within the Agreements, in accordance with their respective terms;

(b) Any fraudulent act or omission by Property Owner, or Property Owner’s successors and assigns, pertaining to or made in connection with the use of the Proceeds;

(c) Failure to use the Proceeds for the express purpose of building a Shelter Facility in accordance with the Funding and Assignment Agreement;

(d) Failure to operate the Shelter Facility in a manner described in Section 1 above and in accordance with the Shelter Operating Agreement.

8. **Remedies:** The occurrence of any Event of Default, or any other uncured violation by Property Owner under the Agreements as applicable, shall give the City the right to proceed with any and all legal and equitable remedies available to the City, including, but not limited to, those set forth in the Agreements. No right, power, or remedy given to the City by the terms of this Covenant is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such instrument, or by any statute or otherwise against Property Owner and any other person. Neither the failure nor any delay on the part of the City to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

(a) **Covenant Remedy:** Notwithstanding any other remedy described in the Agreements or in Paragraph 8 above, in the event Property Owner commits an Event of Default in a manner described in Section 7 above, the City shall have the option, but not the obligation, to require Property Owner or its successors and assigns to convey the Property to the City, at no cost to the City, in order for the City to continue to own and operate the Property in compliance with the Agreements. Property Owner agrees and acknowledges that the City’s provision of the Proceeds for the construction of the Shelter Facility constitutes good, valuable and sufficient consideration for such conveyance. Such conveyance shall be in accordance with then-applicable City rules, orders, regulations and law. Prior to any demand for conveyance, the City agrees to allow Property Owner or Property Owner’s lenders the ability to cure the Event of Default within thirty (30) days by making a written demand upon Property Owner. If the default is not a type which can be cured within the Cure Period, the City, at its reasonable discretion, may extend the cure period if the Property Owner provides the City with a reasonably detailed written plan of how the Property Owners or its lenders will cure the nonmonetary default and the Property Owner or its lenders, at all times within such additional time period, actively and diligently pursues such plan. If the Event of Default is not timely cured by Property Owner or Property Owner’s lenders, the City can make a written demand for a conveyance of the Property. If the Property Owner does not convey the

Property within thirty (30) days of the written demand for conveyance, the City has a right, but not an obligation, to file suit requesting specific performance of the Covenant remedy described in this Section 8(a) with a court having appropriate jurisdiction located within the boundaries of the City.

9. **Notices:** Any notices, responses, or communications given hereunder may be personally delivered or sent by first class mail, addressed to the following:

To the City:

Executive Director and Chief Housing Officer
Department of Housing Stability
City and County of Denver
201 West Colfax Avenue, Dept. 208
Denver, Colorado 80202

Denver City Attorney's Office
1437 Bannock Street, Room 353
Denver, CO 80202

With copy, during the Shelter Phase, to:

City and County of Denver Bond Program
Project Implementation Project Manager
201 West Colfax Avenue, Dept. 506
Denver, CO 80202

To Urban Peak Shelter, LLC:

Chief Executive Officer
Urban Peak Denver
2100 Stout Street
Denver, CO 80205

The contacts and addresses specified above may be changed by the Parties at any time upon written notice to the other Party.

10. **Examination of Records and Audits:** 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 Property Owner's performance pursuant to this Covenant, provision of any goods or services to the City, and any other transactions related to this Covenant. Property Owner 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 Agreements or expiration of the applicable statute of limitations. When conducting an audit of this Covenant, 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 audits pursuant to this paragraph shall require Property Owner to make disclosures in violation of state or federal privacy laws. Property Owner shall at all times comply with D.R.M.C. 20-276.

IN WITNESS WHEREOF, Property Owner has executed this Covenant the day and year first above written.



EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY)
12/19/2022

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

PRODUCER NAME, CONTACT PERSON AND ADDRESS Moody Insurance Agency, Inc. Kendall Higgins, CRIS 8055 East Tufts Avenue Denver CO 80237		PHONE (A/C, No, Ext): (303) 824-6600	COMPANY NAME AND ADDRESS Westchester Surplus Lines Insurance Company; See Below 3630 Peachtree Rd NE Ste 1700 Atlanta GA 30326	NAIC NO: 10030
FAX (A/C, No): (303) 370-0118	E-MAIL ADDRESS: kendall.higgins@moodyins.com		IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH	
CODE: AGENCY CUSTOMER ID #: 00044402	SUB CODE:		POLICY TYPE Proj Spec - Builders Risk	
NAMED INSURED AND ADDRESS Urban Peak Denver 2201 Stout Street Denver CO 80205		LOAN NUMBER	POLICY NUMBER See Below	
ADDITIONAL NAMED INSURED(S) See Below		EFFECTIVE DATE 12/15/2022	EXPIRATION DATE 09/15/2023	<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED
		THIS REPLACES PRIOR EVIDENCE DATED:		

PROPERTY INFORMATION (ACORD 101 may be attached if more space is required) BUILDING OR BUSINESS PERSONAL PROPERTY

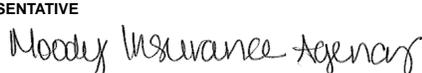
LOCATION / DESCRIPTION 1630 S Acoma Street Denver CO 80223
<p>THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE 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.</p>

COVERAGE INFORMATION PERILS INSURED BASIC BROAD SPECIAL

COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE:	\$ 32,190,682	DED: \$50,000
<input type="checkbox"/> BUSINESS INCOME <input type="checkbox"/> RENTAL VALUE	YES NO N/A	If YES, LIMIT: Actual Loss Sustained; # of months:
BLANKET COVERAGE	<input checked="" type="checkbox"/>	If YES, indicate value(s) reported on property identified above: \$
TERRORISM COVERAGE	<input checked="" type="checkbox"/>	Attach Disclosure Notice / DEC
IS THERE A TERRORISM-SPECIFIC EXCLUSION?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
IS DOMESTIC TERRORISM EXCLUDED?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
LIMITED FUNGUS COVERAGE	<input checked="" type="checkbox"/>	If YES, LIMIT: \$50,000 DED:
FUNGUS EXCLUSION (If "YES", specify organization's form used)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
REPLACEMENT COST	<input checked="" type="checkbox"/>	
AGREED VALUE	<input checked="" type="checkbox"/>	
COINSURANCE	<input checked="" type="checkbox"/>	If YES, %
EQUIPMENT BREAKDOWN (If Applicable)	<input checked="" type="checkbox"/>	If YES, LIMIT: \$32,190,682 DED: \$50,000
ORDINANCE OR LAW - Coverage for loss to undamaged portion of bldg	<input checked="" type="checkbox"/>	If YES, LIMIT: Included DED: \$50,000
- Demolition Costs	<input checked="" type="checkbox"/>	If YES, LIMIT: \$500,000 DED: \$50,000
- Incr. Cost of Construction	<input checked="" type="checkbox"/>	If YES, LIMIT: Included above DED: \$50,000
EARTH MOVEMENT (If Applicable)	<input checked="" type="checkbox"/>	If YES, LIMIT: \$15,000,000 DED: \$100,000
FLOOD (If Applicable)	<input checked="" type="checkbox"/>	If YES, LIMIT: \$5,000,000 DED: \$100,000
WIND / HAIL INCL <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions:	<input checked="" type="checkbox"/>	If YES, LIMIT: \$32,190,682 DED: 2% VARTOL,\$100k min
NAMED STORM INCL <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions:	<input checked="" type="checkbox"/>	If YES, LIMIT: \$32,190,682 DED: \$50,000
PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS	<input checked="" type="checkbox"/>	

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

<input type="checkbox"/> CONTRACT OF SALE <input type="checkbox"/> MORTGAGEE	<input type="checkbox"/> LENDER'S LOSS PAYABLE <input checked="" type="checkbox"/> Loss Payee & Addl Insured	<input type="checkbox"/> LOSS PAYEE	LENDER SERVICING AGENT NAME AND ADDRESS
NAME AND ADDRESS City & County of Denver Dept of Housing Stability 200 W Colfax Dept 615 Denver CO 80202			AUTHORIZED REPRESENTATIVE 

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ADDITIONAL REMARKS SCHEDULE

AGENCY Moody Insurance Agency, Inc.		NAMED INSURED The Peak Inc.	
POLICY NUMBER			
CARRIER	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 28 **FORM TITLE:** Evidence of Commercial Property Insurance: Notes

City and County of Denver, its elected and appointed officials, employees and volunteers are included additional insured and/or loss payee under the Builders' Risk policy.



ADDITIONAL REMARKS SCHEDULE

AGENCY Moody Insurance Agency, Inc.		NAMED INSURED The Peak Inc.	
POLICY NUMBER _____		EFFECTIVE DATE: _____	
CARRIER _____	NAIC CODE _____		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 28 **FORM TITLE:** Evidence of Commercial Property Insurance: Notes

Limits
 Hard Costs: \$29,232,420
 Soft Costs: \$2,958,252
 Total Insured Value: \$32,190,682

Carriers:

Carrier: Westchester Surplus Lines Insurance Company
 Policy Number: 111204399 001
 Limit: \$10,000,000 p/o \$32,190,682 (31.0649%)

Carrier: Columbia Casualty Company (Eirion)
 Policy Number: BR020209 001
 Limit: \$10,000,000 p/o \$32,190,682 (31.0649%)

Carrier: Certain Underwriters at Lloyds of London (RiskSmith)
 Policy Number: TBD
 Limit: \$12,190,682 /o \$32,190,682 (39.29%)

Sublimits:
 Property In Transit: \$500,000
 Offsite Temporary Story: \$500,000

Deductibles:
 Physical loss or damage to Property Insured (except below) : \$50,000
 Water Damage other than Flood: \$150,000
 Earth Movement: \$100,000
 Flood: \$100,000
 Windstorm and Hail: 3% of TIV at risk at time and place of loss subject to a minimum deduction of \$100,000

Waiting Period Delay In Completion: 30 Days
 Period of Indemnity: 365 Days

Permission to Occupy: 4 Consecutive Weeks

Replacement Cost Form.

Named Insured: Urban Peak Denver

Additional Named Insureds: The Peak, Inc. ; Deneuve Design Inc. dba Deneuve Construction Services

Additional Insured/ Loss Payee: City and County of Denver, its elected and appointed officials, employees and volunteers

EXHIBIT D

EXAMPLE OF CONSTRUCTION INSURANCE REQUIREMENTS

Note: The City and County of Denver's Risk Management Office must be consulted on final insurance to be required of all General Contractors.

INSURANCE:

A. General Conditions: The General Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. The General Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for eight (8) years after termination of the Agreement. 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 Agreement. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction 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, General Contractor 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). The General Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements do not lessen or limit the liability of the General Contractor. The General Contractor 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 General Contractor shall provide a copy of this Agreement to its insurance agent or broker. The General Contractor further agrees to have its agent or broker provide proof of the General Contractor's required insurance. The [URBAN PEAK] reserves the right to require the General Contractor to provide a certificate of insurance, a policy, or other proof of insurance as required by the [URBAN PEAK]'s Risk Administrator in his sole discretion.

C. Additional Insureds: For general liability, excess/umbrella liability, and Builder's Risk, the General Contractor's insurer shall name the [URBAN PEAK] and the City and County of Denver, Colorado ("City") as an additional insured, and/or loss payee.

D. Waiver of Subrogation: For all coverages, the General Contractor's insurer shall waive subrogation rights against the [URBAN PEAK]. [If Professional Liability is required, this Waiver of Subrogation language shall be revised to: *For all coverages required under this Agreement, with the exception of Professional Liability, the General Contractor's insurer shall waive subrogation rights against the [URBAN PEAK].*]

E. Subcontractors: All subcontractors, independent contractors, suppliers or other entities providing goods or services required by this Agreement shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the General Contractor. The General Contractor shall include all such subcontractors, independent contractors, suppliers or other entities as insureds under its policies or shall ensure that all subcontractors maintain the required coverages. The General Contractor agrees to provide proof of insurance for all such subcontractors, independent contractors, suppliers or other entities upon request by the [URBAN PEAK].

F. Worker's Compensation/Employer's Liability Insurance: The General Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. The General Contractor expressly represents to the [URBAN PEAK], as a material representation upon which the [URBAN PEAK] is relying in entering into this Agreement, that none of the General Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date the General Contractor executes this Agreement. These coverages shall apply to all work or services performed outside the United States. These coverages shall apply to any work or services performed by employees covered by the Federal Employee's Liability and Compensation Act.

G. General Liability: The General Contractor shall maintain limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury, \$1,000,000 products and completed operations for each occurrence, and \$2,000,000 policy aggregate. Aggregate limits must be "per project" or "per location".

H. Business Automobile Liability: The General Contractor shall maintain \$1,000,000 combined single limit applicable to all vehicles operating on [URBAN PEAK]'s property and elsewhere which includes auto pollution liability coverage for any vehicle hauling cargo containing pollutants or contaminants. If transporting wastes, hazardous material, or regulated substances, the General Contractor shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy. Transportation coverage under the General Contractors Pollution Liability policy shall be an acceptable replacement for a pollution endorsement to the Business Automobile Liability policy.

I. Builders' Risk or Installation Floater (if required by Risk Management): The General Contractor shall maintain limits equal to the completed value of the project. Coverage shall be written on an all risk, replacement cost basis including coverage for soft costs, flood and earth movement, if in a flood or quake zone, and, if applicable, equipment breakdown including testing. The City and County of Denver, General Contractor, and sub-General Contractors shall be Additional Named Insureds under the policy. Policy shall remain in force until acceptance of the project by the City. The General Contractor shall be responsible for the ultimate costs associated with deductibles under the builder's risk insurance as a Cost of the Work.

J. Excess/Umbrella Liability: The General Contractor shall maintain \$5,000,000 in excess/umbrella liability coverage.

K. General Contractors Pollution Liability (if required by Risk Management): The General Contractor shall maintain limits of \$1,000,000 per occurrence and \$2,000,000 policy aggregate. Policy to include bodily injury; property damage including loss of use of damaged property; defense costs including costs and expenses incurred in the investigation, defense or settlement of claims; and clean-up costs.

L. Professional Liability (required if work includes engineering or design work): The General Contractor shall maintain minimum limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. The policy shall be kept in force, or a Tail policy placed, for three (3) years for all contracts except construction contracts for which the policy or Tail shall be kept in place for eight (8) years.

M. Additional Provisions:

(a) For all general liability and excess/umbrella liability, the policies must provide the following:

- (i) That this Agreement is an Insured Contract under the policy;
- (ii) Defense costs are in excess of policy limits;
- (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(b) For claims-made coverage:

- (i) 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

(c) The General Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the General Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

Exhibit E

PERMANENT EASEMENT FOR ARTWORK ([location name])

THIS PERMANENT EASEMENT FOR ARTWORK (the “Easement”), is granted this ____ day of _____, 202__ by the _____, a Colorado ____ (“Grantor”) to the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, whose address is 1437 Bannock Street, Denver, Colorado (“City” or “Grantee”).

For ten dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor and Grantee acknowledge in relation to the _____ at _____, Denver, Colorado (the “____”) as depicted on **Exhibit B** as follows:

1. Grant of Easement. The Grantor grants and conveys a permanent easement to the City, to [penetrate the ____ wall/place upon the real property owned by Grantor] and under, through, in, upon and over the area described in **Exhibit A**, attached hereto and incorporated herein (collectively, “Easement Area”) for the purpose of installing, owning, exhibiting, repairing, maintaining, replacing and removing a work of art consisting of [sculptures/attached mural] made of _____ by artist _____ and the related descriptive plaque (collectively, the “Work”). The City may, subject to the terms and conditions of this Easement, use the Easement Area in any lawful manner consistent with the Easement granted herein.

2. Covenants of the Grantor. The Grantor shall allow the City reasonable and sufficient access, ingress and egress to, and visibility of, the Work within the Easement Area. The Grantor shall not construct or place any structure or object that would interfere with the Easement herein granted without prior written consent of the City, through the Director of Arts and Venues Denver or the Director’s designee or successor (“Director”). Grantor expressly acknowledges and agrees it shall take no action which would disturb, modify, or alter the Work without express permission of the Director and the artist _____.

3. Covenants of the City. The City shall use reasonable efforts not to disturb or alter the Easement Area or any portion of the Easement Area (without implying a right to use the property other than the Easement Area) except for the installation, maintenance and removal of the Work. The City’s use of the Easement Area shall not interfere with the Grantor’s ability to use its property, except as authorized by this Easement. Unless otherwise expressly agreed upon, Grantor shall not be responsible for any way for maintenance of the Work. The Easement Area shall be used in compliance with all laws and regulations and agreements and kept free from mechanics’ or materialmen’s liens.

4. Reservations by the Grantor. The Grantor retains the right to the undisturbed use and occupancy of the Easement Area insofar as the use and occupancy is consistent with and does not impair any grant in this Easement and except as otherwise provided in this Easement. The Grantor reserves the full use of the Easement Area that is not inconsistent with the

Easement, including the right to grant additional easements for utilities or otherwise within the Easement Area.

5. Governing Law; Venue. Each and every term, condition, or covenant of this Easement is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable federal law, the Charter of the City and County of Denver, and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant to the Charter. The applicable law, together with the Charter, Revised Municipal Code and regulations of the City and County of Denver, as the same may be amended from time to time, are expressly incorporated into this Easement as if fully set out by this reference. Venue for any action relating to this Easement shall be in the State District Court in the City and County of Denver, Colorado.

6. Successors and Assigns. The provisions of this Easement shall inure to the benefit of and bind the successors and assigns of the parties and all covenants herein shall apply to and run with the land.

7. Authorization. The signatories to this Easement represent that they have the authority to execute this Easement on behalf of Grantor and the City.

8. Severability. The promises and covenants in this Easement are several in nature. Should any one or more of the provisions of this Easement be judicially adjudged invalid or unenforceable, the judgment shall not affect, impair, or invalidate the remaining provisions of this Easement.

9. Notices. All notices under this Easement shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, to the parties at the addresses given below or at such other address that may be specified by written notice in accordance with this paragraph:

If to Denver: Mayor
1437 Bannock Street, Room 350
Denver, Colorado 80202

With copies to: Denver City Attorney
1437 Bannock Street, Room 353
Denver, Colorado 80202

Director of Arts and Venues Denver
1245 Champa Street, First Floor
Denver, Colorado 80204

If to Grantor: _____

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B
MAP