

**REVIVAL AND FOURTH AMENDMENT TO EMERGENCY OCCUPANCY
AGREEMENT**

This **REVIVAL AND FOURTH AMENDMENT TO EMERGENCY OCCUPANCY AGREEMENT** (“Revival and Fourth Amendment”) is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation and home rule city of the State of Colorado (the “City” or “Government”) and **JBK HOTELS, LLC**, a Delaware limited liability company (“Owner”).

WHEREAS, the parties entered into an Emergency Occupancy Agreement dated May 6, 2020 (City Clerk File No. 202054515-00) for the City to use Owner’s hotel facility to provide non-congregate sheltering to members of the public on an expedited, emergency basis due to the COVID-19 pandemic, as amended by that certain Amendment to Emergency Occupancy Agreement dated September 21, 2020 (City Clerk File No. 202055637-01), Second Amendment to Emergency Occupancy Agreement dated January 14, 2021 (City Clerk File No. 202057157-02) and Third Amendment to Emergency Occupancy Agreement dated July 2, 2021 (City Clerk File No. 202159069-03) (collectively, the “Agreement”); and

WHEREAS, the Agreement expired by its terms on September 30, 2021, and rather than enter into a new agreement, the parties wish to revive and reinstate all terms and conditions of the Agreement as they existed prior to the expiration of the Term and to amend the Agreement as set forth below.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and obligations herein set forth, the parties agree as follows:

1. Article 1 of the Agreement entitled “**OCCUPANCY**” is amended by adding the following sentences at the end thereof:

“The City and Owner shall coordinate the vacating of the Occupied Premises according to a staggered schedule of vacating certain floors of the Building with corresponding target exit dates as follows:

Floors 5 and 6 – Target exit date of December 3, 2021
Floors 4 and 3 – Target exit date of December 17, 2021
Floors 1 and 2 – Target exit date of December 27, 2021

The foregoing target exit dates are subject to change by mutual agreement of the parties and shall not constitute a breach of the Agreement by the City if the floors are not vacated by such target date(s). During the vacating process, the City or any of its representatives, agents or contractors may enter the Building to visually inspect the Building, including each vacated Room, to document the condition of the Building and such vacated Room(s).”

2. The definition for the term “**Term**” under Article 2 of the Agreement is deleted in its entirety and amended to read as follows:

“2. **TERM:** The term of this Agreement shall begin on the Effective Date, and terminate at 11:59 P.M. on December 31, 2021 (“Term”), *provided, however,* the parties agree that the City may terminate this Agreement at any time upon expiration of the Public Health Emergency, as that term is defined under the Nationwide Emergency Declaration.”

3. The definition for the term “**Maximum Contract Amount**” under Article 3 of the Agreement is deleted in its entirety and amended to read as follows:

“Notwithstanding any other provisions of the Agreement, the City’s maximum payment obligation will not exceed Eight Million Four Hundred Thirteen Thousand dollars (\$8,413,000.00) (the “Maximum Contract Amount”).”

4. A new Article 36 entitled “**DAMAGES DISCLAIMER**” is added to the Agreement to read as follows:

“36. **DAMAGES DISCLAIMER:** The Owner acknowledges and agrees that a portion or all of the funds that the City has paid or will pay to the Owner pursuant to the Agreement for the purposes contemplated therein originate from federal sources, including, without limitation, reimbursement from FEMA. Subject to Section 10(e) of the Agreement, to the extent that the City’s use of the Property has damaged the Property, the Owner shall calculate, verify and document, to the City’s reasonable satisfaction, which satisfaction shall not be unreasonably withheld, all direct costs directly associated or attributable to such remediation efforts (collectively, “Remediation Costs”). The Owner hereby certifies that to the best of its knowledge, all damages that have resulted in Remediation Costs are valid, true and verifiably the direct result of the City’s usage of the Property, and all documentation related to the Remediation Costs shall be provided to the City, with

or without demand, for the City's prior review and approval, which may be granted or denied in the City's sole discretion. The Owner agrees and acknowledges that public funds, regardless of their origination, shall be used to pay for the Remediation Costs and, consequently, the Owner shall use its best efforts to competitively bid any work related to the Remediation Costs to obtain the best valuable and responsive work. The Owner acknowledges that the City may seek to be reimbursed for the Remediation Costs by FEMA and, as such, the repayment of all Remediation Costs shall be subject to all applicable FEMA guidelines and regulations, including, without limitation, those related to the documentation of reimbursable costs. The Owner shall cooperate with the City and/or FEMA to obtain and share such documentation with the City and/or FEMA that the City and/or FEMA determine may be reasonably necessary to enable the City to seek FEMA reimbursement for its share of the Remediation Costs. Further, the Owner agrees and acknowledges that there may be penalties under applicable state and/or federal law for falsifying information documenting the Remediation Costs, and, in the event that such documentation is determined by the City and/or FEMA to have been falsified or incomplete, the City may deny payment of any or all of the Remediation Costs and pursue any further or additional legal or equitable remedies that may be available to it, including but not limited to reimbursement of Remediation Costs previously paid by the City to the Owner plus any federal penalties incurred by the City. No representation or certification is made by the City regarding the accuracy or completeness of information received from parties other than the City upon which the City may rely. The certification provided herein is directed to the City and FEMA, and may not be relied upon by any other third parties."

5. Except as herein amended, the Agreement is revived, affirmed and ratified in each and every particular.

6. This Revival and Fourth Amendment 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.

[SIGNATURE PAGES FOLLOW]

Contract Control Number:

FINAN-202054515-04/FINAN-202055637-04/
FINAN-202057157-04/FINAN-202159069-04/FINAN-202159610-04

Contractor Name:

JBK HOTELS, LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at
Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:


By:

Contract Control Number:

FINAN-202054515-04/FINAN-202055637-04/
FINAN-202057157-04/FINAN-202159069-04/FINAN-202159610-04

Contractor Name:

JBK HOTELS, LLC

By:  _____

Name: Jonathan Gandhi
(please print)

Title: Manager
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)