

OWNER'S REPRESENTATIVE SERVICES AGREEMENT

This OWNER'S REPRESENTATIVE SERVICES AGREEMENT (this "**Agreement**") is made as of June 17, 2019 (the "**Effective Date**"), by and between the URBAN RENEWAL AUTHORITY OF THE CITY OF COMMERCE CITY, COLORADO, a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado ("**Owner**"), and REAL ESTATE GENERATION, LLC, a limited liability company organized under the laws of the State of Colorado ("**Owner's Representative**"). Owner and Owner's Representative are each individually referred to herein as a "**Party**" and collectively as the "**Parties.**"

RECITALS:

A. Owner owns fee simple title to that certain real property to the approximately 65 acre parcel commonly known as the former Mile High Greyhound Park located in the City of Commerce City, Colorado (the "**Property**").

B. On June 18, 2018, the City Council of the City of Commerce City, Colorado (the "**City**") approved the "The Mile High Greyhound Park Urban Renewal Plan" (the "**Urban Renewal Plan**").

C. Previously, the City, Owner, and Owner's Representative entered into that certain Amended and Restated Phased Redevelopment Agreement dated June 18, 2018 (the "**2018 Agreement**"), concurrent with approval of the Urban Renewal Plan.

D. The City, Owner and Owner's Representative have decided to no longer proceed under the terms of the 2018 Agreement, and have instead agreed that Owner shall enter into a new Amended and Restated Phased Redevelopment Agreement (the "**MDA**") with DELWEST DEVELOPMENT CORP., a Colorado corporation or an affiliate entity thereof (together with any permitted successors or assigns thereto, "**Redeveloper**"), wherein Redeveloper shall serve as the master developer for the Property, along with a Purchase and Sale Agreement for the eastern portion of the Property ("**PSA**") between the City, Owner and Redeveloper.

E. Owner desires to retain Owner's Representative to manage and administer, on behalf of Owner, all of Owner's obligations set forth in the MDA and PSA, and to provide review and oversight of Redeveloper's obligations set forth in the MDA and PSA, in connection with the redevelopment of the Property in accordance with the Improvements Scope of Work Description and Depiction, attached to the MDA as Exhibit C, and in furtherance of the Urban Renewal Plan (collectively, the "**Redevelopment**").

AGREEMENT:

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the Parties agree as follows:

1. Appointment.

1.1 **Appointment.** Owner appoints Owner's Representative, and Owner's Representative accepts such appointment, as Owner's Representative for the management and administration of the Work, on the conditions and subject to the limitations set forth herein.

1.2 **Independent Contractor.** Owner's Representative shall be and is an independent contractor, and not an employee of Owner. Owner's Representative shall not be deemed a joint venturer, partner or employee of Owner by reason of its performance of this Agreement or by reason of its involvement with the MDA, PSA or other Work related documents. Owner's Representative shall not have the authority to enter into agreements on behalf of Owner or otherwise bind Owner by its decisions.

2. **Services of Owner's Representative.**

2.1 **Owner's Objectives; Legal Requirements.** Owner retains Owner's Representative to provide sufficient organization, oversight and management over Redeveloper's performance, pre-development activities and redevelopment of the Property: (a) in an expeditious and economical manner, using the reasonable skill and judgment consistent with the standards of Owner's Representative's profession and to further the best interests of Owner ("**Owner's Objectives**"), and (b) in accordance with applicable laws, statutes, ordinances, orders, rules, regulations, and requirements of all federal, state, and municipal governments, whether now or hereafter in force ("**Legal Requirements**").

2.2 **Labor and Supplies.** Owner's Representative shall furnish all labor, services, supplies, materials and equipment required to complete the Work in accordance with this Agreement.

2.3 **Redeveloper's Project Team.** The "**Project Team**" means (i) Redeveloper, (ii) Kimley-Horn and Associates, Inc., and (iii) the other consultants and professionals that perform consulting services for the Redevelopment on behalf of Redeveloper, including, without limitation, inspecting architects and engineers, testing laboratories, and surveyors (collectively, "**Consultants**"). Nothing contained in this Agreement shall create any obligation or contractual relationship between Owner's Representative and any third party, including without limitation, any other member of the Project Team.

2.4 **Changes to the Work.** Owner may modify the Work without invalidating this Agreement. To avoid delay, upon receipt of an Owner-requested change in the Work, Owner's Representative shall promptly proceed with the change in Work. If Owner's Representative believes it is entitled to additional compensation for the change in Work, Owner's Representative shall promptly notify Owner in writing. Any change in Owner's Representative's compensation shall be made by a written agreement signed by the parties.

2.5 **Scope of Services.** Owner's Representative has provided prior to the Effective Date, and shall provide during the term of the PSA and the Redevelopment, the following services (collectively, the "**Work**"), described on **Exhibit A** attached hereto. **Exhibit A** may be modified by written agreement of Owner's Representative and Owner, and Owner hereby delegates its authority to Owner's Executive Director or his designee, also known as the City Manager or Deputy City Manager.

2.6 **Other Services.** As part of the Work, Owner's Representative shall perform such services as are reasonably necessary to conclude the activities described in **Exhibit A**.

2.7 **Personnel.**

(a) Owner's Representative may investigate, hire, train, pay, supervise and discharge personnel reasonably required to be employed in order to perform the Work. Such personnel shall in every instance be deemed agents or employees, as the case may be, of Owner's

Representative and not of Owner, and all matters pertaining to the employment, supervision, compensation, promotion and discharge of such employees or agents shall be the sole responsibility of Owner's Representative.

(b) Owner's Representative shall, at its own expense, comply with all applicable worker's compensation, unemployment insurance, employer's liability, tax withholding, minimum wage and hour, and other federal, state, county and municipal laws, ordinances, rules, regulations and orders. Owner's Representative agrees to abide by the Occupational Safety and Health Act of 1970, as the same may be amended from time to time (OSHA), applicable state and municipal safety and health laws and all regulations pursuant thereto.

2.8 Owner's Representative's Materials. Under the 2018 Agreement, Owner's Representative created or obtained, or had created or obtained various tangible personal property pertaining to the Property, the Redevelopment and the Development Plan, including but not limited to engineering studies, economic models and plans, public outreach materials, marketing materials, engineering, consulting, architectural and other similar plans, specifications, working drawings and any and all amendments and modifications thereto, relating to the design or construction of the Redevelopment, landscape plans, development rights and governmental entitlements (the "**Personal Property**"). Owner's Representative agrees to provide Owner and Redeveloper with USB drive or flash drive containing the Personal Property by May 24, 2019. Concurrent with the execution of this Agreement, Owner's Representative shall execute the Bill of Sale attached hereto as **Exhibit B** conveying this Personal Property to Owner.

2.9 Delegation. Owner's Representative may not delegate any obligation hereunder without Owner's prior written approval.

3. Owner's Representative's Lump Sum Payment and Fee. Concurrent with the signing of this Agreement, Owner shall pay Owner's Representative \$431,590.42 for third party costs already incurred pursuant to the 2018 Agreement, and Owner's Representative's work pursuant to the 2018 Agreement (the "**Lump Sum Payment**"). Owner's Representative acknowledges that this Lump Sum Payment is full and final settlement of any payments owed by Owner to Owner's Representative under the 2018 Agreement. Owner's Representative shall earn \$5,000 per month for the term of this Agreement plus interest on: (a) the previously unpaid third party costs and Owner's Representative's work pursuant to the 2018 Agreement as of the date they were incurred and (b) any unpaid portion of the \$5,000 per month fee (the "**Fee**"), all as shown by example in **Exhibit C** attached. Interest shall be accrued at an annual rate of eight percent (8%) compounded quarterly beginning on July 1, 2019. The Parties agree that the Fee is of an amount to compensate Owner's Representative for the Work under this Agreement. **Exhibit C** attached hereto and incorporated herein is included as a reference to calculate how the Fee is incurred and calculated over time and shall be updated on a quarterly basis to reflect actual payments made over time from Incremental Taxes and accrued but unpaid Fee. The Fee shall be tracked in accounting records and paid by Owner to Owner's Representative over time upon receipt of Incremental Taxes (as defined in the MDA) based on a payment which is 3.00% of each installment of Incremental Taxes received by Owner from the Adams County Treasurer until the earlier of: (a) Incremental Taxes no longer being received by Owner, or (b) Owner's Representative being compensated the Fee. If Owner monetizes the Incremental Taxes anticipated over time by obtaining a loan or issuing bonds against them, Owner agrees to pay Owner's Representative the total Fee owed at such time. Owner's Representative acknowledges

that Owner's payment obligation under this Section 3 shall be limited to the amount of Incremental Taxes (as defined in the MDA) and other amounts actually received from the City and from the Adams County Treasurer and legally available for such purpose, less Priority Fees (as defined in the MDA) and other amounts due and owing to Owner in accordance with the MDA. Nothing in this Agreement shall be construed to require Owner to make any payments to Owner's Representative, on a periodic and aggregate basis, in excess of the Fee which is made up of Incremental Taxes actually received by Owner. Owner's Representative acknowledges that the generation of Incremental Taxes is significantly dependent upon completion of the Redevelopment within the Urban Renewal Area defined in the Urban Renewal Plan and agrees that Owner is in no way responsible for the amount of Incremental Taxes actually generated. Owner's Representative further acknowledges that the Property Tax Administrator for the State of Colorado and Adams County Assessor may modify the process for calculating Incremental Taxes which may reduce the amount of Incremental Taxes and, therefore, the amount of money available to pay the Fee. Owner's Representative therefore agrees to assume the entire risk that insufficient Incremental Taxes will be generated for Owner to pay the Fee to Owner's Representative. Owner's Representative shall be responsible for its actual out-of-pocket costs and expenses, including but not limited to transportation, telephone costs, and printing and postage.

4. **Term and Termination.**

4.1 **Term.** This Agreement and its term shall automatically terminate when the Redeveloper completes the Improvements and the Regional Storm Water Facility in accordance with the Improvements Scope of Work Description and Depiction, attached to the MDA as Exhibit C, subject to earlier termination as set forth in Section 4.2 below. The Parties may mutually extend the term of this Agreement on an annual basis by mutual written agreement.

4.2 **Termination.**

(a) **Owner's Special Right of Termination.** Owner may, without penalty and with or without cause, terminate this Agreement at any time upon at least 10 days' prior written notice to Owner's Representative.

(b) **Event of Default.** Upon the occurrence of any of the following, the Non-Defaulting Party (as defined below) shall have the right to terminate this Agreement immediately upon written notice to the Defaulting Party (as defined below) (each, an "**Event of Default**"):

(i) the failure or refusal by a Party (the "**Defaulting Party**") to perform, keep or fulfill any material covenant or agreement set forth in this Agreement and such failure or refusal shall continue for more than seven days after written notice from the other Party (the "**Non-Defaulting Party**") (or, if such failure or refusal is of a nature that it can be cured, but cannot, without due diligence, be cured within such seven-day period, then within a reasonable time thereafter not to exceed 14 additional days); or

(ii) immediately upon the occurrence by the Defaulting Party of any act of misappropriation or fraud with respect to this Agreement or the Work; or

(iii) immediately upon the occurrence by the Defaulting Party of (A) an assignment for the benefit of creditors, (B) a voluntary or involuntary insolvency proceeding, or (C) an adjudication of bankruptcy or appointment of a receiver or court-ordered trustee.

(c) **Conditions upon Termination.** In the event this Agreement is terminated in accordance with this Section 4, the following conditions shall apply:

(i) except as otherwise set forth in this Agreement, neither Party shall have any further rights, duties or obligations under this Agreement;

(ii) Owner's Representative shall, in accordance with the terms and conditions of this Agreement, be paid the Fee earned as of the termination date and no further amounts, which Fee shall be paid over time upon receipt of Incremental Taxes, as further described in Section 3 of this Agreement; and

(iii) Owner's Representative shall promptly deliver to Owner, all documents, materials, information, papers, drawings, plats, plans and other items related to the Redevelopment or of Personal Property in Owner's Representative's possession, or under its control.

(iv) either Party's termination of this Agreement shall not preclude such Party's recovery from the other Party of any other amounts or damages to which it is entitled under this Agreement, at law or in equity.

5. Insurance.

5.1 Owner's Representative's Liability Insurance. Owner's Representative at its sole cost and expense, shall obtain and maintain in effect:

(a) Commercial General Liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence with an aggregate amount of Two Million Dollars (\$2,000,000) including coverage for bodily injury (including coverage for death, mental anguish), Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Blanket Contractual Liability, Personal Injury and Broad form Property Damage (including coverage for Explosion, Collapse and Underground hazards), and including Cross Liability and Severability of Interests.

(b) If Owner's Representative hires any employees, Worker's Compensation Insurance in compliance with statutory requirements of the state(s) in which the employee resides, is hired and in which the services are being performed;

(c) If Owner's Representative hires any employees, Employer's Liability Insurance in the amount of \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 policy limit for bodily injury by disease, or such other amount as may be required by umbrella policy to effect umbrella coverage.

(d) Professional Liability insurance in limits not less than \$1,000,000 covering the professional services performed in connection with this Agreement and continuing in force by renewal or extended reporting provision for not less than three years after completion of the Redevelopment. This coverage form may be "claims made" and include defense expense within the limit of liability.

5.2 Certificates of Insurance. Owner's Representative shall deliver to Owner a certificate of insurance with respect to the insurance required under Section 5.1. The certificate shall provide that the coverage therein evidenced shall not be terminated, amended or canceled, except by written notice to Owner at least thirty (30) days prior to the effective date thereof, regardless of whether such termination, amendment or cancellation is initiated by Owner's

Representative or the insurance carrier. Owner shall be added as an additional insured (using CG 20 37 07 04 or equivalent) on a primary non-contributory basis on Owner's Representative's General Liability insurance.

5.3 Waiver of Subrogation. Owner and Owner's Representative waive all rights against each other and their agents and employees for damages caused by fire or other perils to the Redevelopment to the extent of any insurance proceeds actually received in connection with such casualty, together with the amount of any deductible payments to be made with respect to such policies. All policies of casualty insurance required hereunder shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly and whether or not the person or entity had an insurable interest in the property damaged.

6. Representations and Warranties of Owner's Representative. Owner's Representative represents, warrants and covenants to Owner that: (a) the execution, delivery and performance of this Agreement has been duly and validly authorized by all necessary action, corporate or otherwise, on the part of Owner's Representative; (b) the execution, delivery and performance of this Agreement will not result in a breach or violation of or a default under Owner's Representative's articles of incorporation or organization, or under any loan or other agreement or instrument by which Owner's Representative is bound, or of any law, order or regulation; (c) Owner's Representative is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Colorado and is duly qualified to do business in the state in which the Property is located; (d) there are no claims, actions, litigation, judgments, rulings, suits or proceedings actual, pending, or, to the best of Owner's Representative's knowledge, threatened, including, without limitation, bankruptcy or other insolvency proceedings, by or against Owner's Representative which, if determined adversely to Owner's Representative, would adversely affect Owner's Representative's ability to perform its obligations hereunder; and (e) this Agreement constitutes a legal, valid and binding agreement enforceable against Owner's Representative in accordance with its terms except as limited by bankruptcy, insolvency, receivership and similar laws of general application.

7. Books and Records; Reports.

7.1 Books and Records. Owner's Representative shall establish and maintain at its office designated in the notice provision of this Agreement, or at such other location acceptable to Owner, a complete set of books, accounts, records, plans and files related to Owner's Representative's Work pursuant to this Agreement. Owner, and its accountants and other representatives, shall have the right to examine, copy, review and audit all such books and records of Owner's Representative upon reasonable prior written notice.

7.2 Returns Required by Law. Owner's Representative shall execute and file, punctually when due, all forms, reports and returns relating to Owner's Representative's activities required by Applicable Law, including, without limitation, reports relating to the employment of personnel.

8. Indemnity, Non-Recourse Liability.

8.1 Non-Recourse Liability. The liability of Owner for the payment of all sums which may be owed to Owner's Representative under this Agreement and for the performance of all other obligations of Owner to Owner's Representative under this Agreement shall be limited to Owner's interest in the Property and the Fee which is paid from Incremental Taxes received pursuant to the Urban Renewal Plan, as limited by Section 3 hereof. Owner, nor any council member, commissioner, board member, official, employee, agent or consultant of Owner or the City shall be personally liable for the payment of any sums or the performance of any other obligations to Owner's Representative.

8.2 Owner's Representative's Exculpation. Notwithstanding anything contained in this Agreement to the contrary, Owner's Representative shall not be responsible for or have any liability with respect to (a) means, methods, techniques or procedures of construction selected by any of the Project Team, (b) safety precautions and programs incident to work of any of the Project Team, (c) any failure of any of the Project Team to comply with any Applicable Law, (d) any failure of any of the Project Team to perform work on the Property in accordance with the applicable plans, specifications and other contract documents, or (e) any physical defect in the construction or defect in the execution of the Redevelopment.

8.3 Indemnity. To the fullest extent allowed by law, Owner's Representative agrees to release, defend (with counsel reasonably acceptable to Owner), indemnify, and hold harmless Owner from and against all injuries, loss, causes of action, claims, liability, damages, or judgments, including costs, expenses, and reasonably attorneys' fees, to the extent such injuries, loss, causes of action, claims, liability, damages, or judgments, including costs, expenses, and reasonably attorneys' fees, were caused by the negligent acts, errors, or omissions of Owner's Representative or any of its agents, contractors or employees.

8.4 Release. Owner's Representative's role as the master developer under the 2018 Agreement is terminated and the Lump Sum Payment under this Agreement is full and final settlement of any payments owed by Owner to Owner's Representative under the 2018 Agreement. As of the Effective Date of this Agreement, Owner and Owner's Representative hereby forever release and discharge the other Party from any and all claims, demands or causes of action whatsoever against the other Party arising out of or in connection with the 2018 Agreement, and the Parties hereby forever release and discharge the other Party from any obligations to be observed or performed by the other Party under the 2018 Agreement. As part of the Closing (as defined in the PSA), Owner's Representative agrees to execute any affidavits required by the title company regarding the 2018 Agreement and Owner's Representative's current or past roles.

8.5 Survival. The obligations of this Section 8 shall survive the expiration or termination of this Agreement.

9. General Provisions.

9.1 Governing Law; Waiver of Jury Trial. This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by and construed in accordance with the laws of the State of Colorado, without giving effect to principles of conflicts of laws. Any dispute relating to this Agreement shall be heard in the state or federal courts of the State of Colorado, and the Parties agree to jurisdiction and venue therein. Each Party hereby irrevocably waives, to the fullest extent permitted by applicable law, any and

all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

9.2 Attorneys' Fees. If any Party shall commence an action or proceeding to enforce any provisions of this Agreement, then the prevailing Party in such action or proceeding shall be reimbursed by the other Party for its reasonable attorneys' fees and other reasonable costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

9.3 Entire Agreement; Amendment; The Purchase Agreement.

(a) The Agreement contains the entire understanding of the Parties with respect to the subject matter hereof, supersedes all prior or other negotiations, representations, understandings and agreements of, by or among the parties, express or implied, oral or written which are fully merged herein. The express terms of this Agreement control and supersede any course of performance or customary practice inconsistent with any such terms.

(b) Any agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of this Agreement unless such agreement is in writing and signed by the party against whom enforcement of such change, modification, discharge or abandonment is sought.

9.4 Assignability. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. This Agreement shall be deemed personal to Owner's Representative and as such may not be voluntarily or involuntarily assigned by it without the prior written approval of Owner, which approval may be withheld by Owner in its absolute and sole discretion. Any transfer, sale, assignment or pledge of the stock of Owner's Representative to any person or entity shall be deemed an assignment prohibited under this Agreement. Owner's Representative acknowledges that Owner shall have the right to assign this Agreement without Owner's Representative's consent, in which event Owner shall be released from all of its rights, duties and liabilities hereunder accruing on or after the effective date of such assignment.

9.5 Notices.

(a) All notices, demands, request or other communications from each party to the other required or permitted under the terms of this Agreement shall be in writing and, unless and until otherwise specified in a written notice by the party to whom notice is intended to be given, shall be sent to the parties at the following respective addresses:

If to Owner:

Urban Renewal Authority of the City of
Commerce City
7887 E. 60th Avenue
Commerce City, Colorado 80022
Attention: Executive Director

with copies to:

City Attorney
7887 E. 60th Ave.
Commerce City, CO 80022

Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, Colorado 80202
Attn: Caitlin Quander

If to Owner's Representative:

REGen, LLC
1125 Seventeenth Street, Suite 2500
Denver, Colorado 80202
Attention: H. Rickey Wells
Email: rwells@fulenwider.com

(b) Notices may be given on behalf of any party by its legal counsel.

(c) Each such notice, demand, request or other communication shall be deemed to have been properly given for all purposes if (i) delivered against a written receipt of delivery, (ii) mailed by registered or certified mail of the United States Postal Service, return receipt requested, postage prepaid, or (iii) delivered to a nationally recognized overnight courier service for next business day delivery to its addressee at such party's address as set forth above.

9.6 Waiver of Breach; Remedies Cumulative. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach, and no waiver shall be valid unless it is in writing and is signed by the Party against whom such waiver is sought. Except as otherwise provided in this Agreement, the rights and remedies provided in this Agreement are cumulative and are not exclusive of any other rights or remedies which a Party may otherwise have.

9.7 No Third Party Beneficiary Rights. This Agreement is made solely and specifically between and for the benefit of the parties hereto, and their respective successors and assigns, subject to the express provisions hereof relating to successors and assigns, and no other person, individual, corporation or entity, whatsoever, shall have any rights, interests or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

9.8 Time. Time is of the essence of this Agreement.

9.9 Interpretation. No provision of this Agreement is to be interpreted for or against either Party because that Party or that Party's legal representative or counsel drafted such provision.

9.10 Additional Acts. In connection with this Agreement and the transactions contemplated by this Agreement, Owner and Owner's Representative each agree to execute and deliver such additional documents and instruments and take all such necessary action and perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement.

9.11 Provisions Separable. The provisions of this Agreement are independent of and separable from each other, and no provisions shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other provision may be invalid or unenforceable in whole or in part.

9.12 Captions. The captions in this Agreement are inserted for convenience of reference; they form no part of this Agreement and shall not affect its interpretation.

9.13 Confidentiality. Except to the extent such information is made publicly available by Owner or Redeveloper or required to be produced under the City Attorney's independent

judgment or as ordered by any court pursuant to the Colorado Open Records Act, C.R.S. § 24-72-201, et. seq., the Parties agrees to keep such information confidential and, to the extent legally permissible based upon advice of counsel, to treat it as proprietary commercial and financial information not subject to disclosure under Applicable Law. Each Party shall use the same standard of care to protect said information as is used to protect its own confidential and proprietary information, but under no circumstance shall either Party use less than a reasonable standard of care.

9.14 Subordination. Owner's Representative agrees that the lien, operation and effect of any deed of trust now or hereafter encumbering the Property or any portion thereof (including all the loan documents associated with such deed of trust and the rights of the note holders under such loan documents), is and will be superior to and have priority over this Agreement as well as any claim, security interest or right to payment of Owner's Representative arising out of or in any way connected with the Work or any other services performed under this Agreement. In furtherance of the foregoing, Owner's Representative fully and completely subordinates to the lien, operation and effect of, and noteholders' rights to payment under, any such deed of trust, as well as any associated loan documents, the following: (a) its rights under this Agreement; (b) any claim or security interest Owner's Representative may now or hereafter have against the Property and the rents, issues, profits and income therefrom; and (c) any right to payment of Owner's Representative arising out of or in any way connected with its services performed under this Agreement. In confirmation of such subordination, the Parties will execute and deliver to the holder of such deed of trust such subordination instruments as the holder may reasonably request. The parties also agree to make such modifications to this Agreement as may be reasonably requested by the holder of any such deed of trust.

9.15 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall be binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected on this Agreement as the signatories.

[signature page follows]

Owner and Owner's Representative have executed this Agreement as of the Effective Date.

OWNER:

URBAN RENEWAL AUTHORITY OF THE
CITY OF COMMERCE CITY, COLORADO

Attest: By: _____

Chairman

Clerk

James Bauer



Owner's Representative:

REAL ESTATE GENERATION, LLC

By: _____

Name:

Title:

Owner and Owner's Representative have executed this Agreement as of the Effective Date.

OWNER:

URBAN RENEWAL AUTHORITY OF THE
CITY OF COMMERCE CITY, COLORADO

Attest: By: _____
Chairman

Clerk

Owner's Representative:

REAL ESTATE GENERATION, LLC


By: 
Name: H. Ricky Wells
Title: Principal

EXHIBIT A
SCOPE OF SERVICES

[to be attached]

EXHIBIT A
SCOPE OF SERVICES

(a) Serve as the liaison between Owner and the Project Team, and have primary management responsibility for coordinating Redevelopment matters in the best interests of Owner.

(b) Advise Owner in the negotiation of the PSA and the 2019 Agreement.

(c) Advise Owner and make recommendations concerning the following (it being understood that Owner's Representative shall not assume any of the Project Team responsibilities for design, engineering or construction means, methods or costs):

(i) The review and monitoring of Redeveloper's contract with Kimley-Horn to confirm the scope and description is appropriate for the Redevelopment;

(ii) Within two (2) business days of receipt, the review and approval (or disapproval) of the Project Team's engineering plans consistent with the PUD Permit and Exhibit C Scope of Improvements (as defined in the 2019 Agreement);

(iii) Within two (2) business days of receipt, the review and approval (or disapproval) of Project Team applications and submittals to the City for all necessary permits and land use designations up through issuance of building permits;

(iv) Within two (2) business days of receipt, the review and approval (or disapproval) of the Schedule and any modifications thereto, to be set forth in the 2019 Agreement.

(d) Verify that Redeveloper has obtained all permits in accordance with the PSA and Legal Requirements.

(e) Provide monthly reports to Owner regarding Redeveloper's progress and whether the quality of the work is in accordance with the PSA, the 2019 Agreement, and the Design Guidelines and any other information concerning the Redevelopment as Owner may reasonably request.

(f) Ensure that Redeveloper is complying with the following obligations set forth in the PSA:

(i) Redeveloper insurance obligations, including compliance with Owner's existing environmental liability insurance policy; and

(ii) the notice, entry and presence of Owner's Representative or other party authorized by Owner during the Inspection Work (as defined in the PSA).

(g) Represent Owner and coordinate with the City on the redevelopment of the regional storm water facility.

(h) Review and monitor Redeveloper's budget and Redeveloper Draw Requests under the Escrow Agreement (as defined in the PSA) related to the Improvements (as defined in the PSA), for which Redeveloper is escrowing \$9,500,000, which will include hard and soft costs, contingencies for the design and construction and reviewing estimates and invoices of construction costs. Within two (2) business days of receipt, the review and approval (or disapproval) of Draw Requests and preparation for final Owner signoff within the ten (10)

days required in the Escrow Agreement. Prepare and coordinate a clear process with the Escrow Agent and Redeveloper in order to facilitate Draw Requests.

(i) Represent Owner in its communications with the Project Team; attend pre-application and other Project Team meetings with the City; schedule, attend, and conduct progress meetings on at least a monthly basis; attend on-site meetings to review construction progress.

(j) Assist Owner to cause Redeveloper and the Redevelopment to comply with any law, statute, ordinance, resolution, rule, regulation, order or determination of any governmental authority (or other body exercising similar functions), or any recorded restrictive covenant or deed restriction affecting the Property, including, without limitation, all applicable zoning ordinances and building codes, health and environmental laws and regulations, and laws and regulations governing accessibility by the disabled.

(k) Promptly furnish to Owner, upon receipt by Owner's Representative, copies of any and all legal notices received by Owner's Representative respecting Redeveloper, Redevelopment or the Property, or of any suit, proceeding or other action threatened, commenced or taken against Redeveloper, Redevelopment or the Property, or any part thereof, or against Owner or Owner's Representative, with respect to Redeveloper, Redevelopment or the Property or any part thereof.

(l) Notify Owner if Owner's Representative becomes aware that Redeveloper is not performing in accordance with the requirements of the 2019 Agreement, the PSA, the Design Guidelines or the PUD Permit. With written authorization of Owner, Owner's Representative shall reject work which does not conform to the requirements of the 2019 Agreement, the PSA, the Design Guidelines or the PUD Permit.

(m) Assist Owner in the final close-out of the Redevelopment by: (i) obtaining from the Project Team copies of record drawings or, if required by the applicable construction contract, "as-built" drawings; and (ii) representing Owner at meetings and inspections scheduled by Owner or Project Team and help to resolve problems relating to design, physical condition or operation of the Redevelopment to seek enforcement of warranties.

(n) Review any land sale or 3rd party development agreements proposed by Redeveloper in the course of the Redevelopment.

(o) Review and approve or disapprove the construction contract between Redeveloper and the general contractor or any sub-contractors selected by Redeveloper to perform work on the Redevelopment.

(p) Review and approve or disapprove bids from the general contractor and the sub-contractors for work to be performed by Redeveloper and paid from the Escrow Agreement.

(q) Review any changes to the Redeveloper contract with the general contractor including any changes in scope, pricing, or schedule proposed by either the general contractor or Redeveloper.

(r) Modify existing pro formas and financial models to assist Owner in evaluating economics related to land sales and redevelopment of the remaining un-contracted portions of the Project.

(s) Review and approve proposals for fulfilling the project art component of the Redevelopment work.

(t) Coordinate between Redeveloper and the Adams 14 School District on the timing and payment due under the School District IGA (defined in the PSA).

(u) Evaluate offers made from 3rd parties for development of the commercial (Parcel #2) and the educational (Parcel #1) quadrants of the Project.

(v) Review and track annual receipts of Incremental Revenues (as defined in the MDA).

(w) Coordinate with CDOT, Owner, and Redeveloper on the planning, funding, and construction of road improvements impacting the State Highway 2 right of way.

(x) Assist as needed in the completion of the Design Guidelines for the Redevelopment.

Specifically excluded from this scope of work is assisting the Owner in selling, issuing TIF supported debt, or otherwise monetizing the TIF revenue stream created by the Redevelopment. The Owner's Representative is qualified to perform this work and will consider doing so on behalf of the Owner, subject to an agreement on additional compensation for such work.

EXHIBIT B
BILL OF SALE

[to be attached]

BILL OF SALE AND GENERAL ASSIGNMENT

THIS BILL OF SALE AND GENERAL ASSIGNMENT ("**Bill of Sale and General Assignment**") is made this 17th day of June, 2019, by REAL ESTATE GENERATION, LLC, a limited liability company organized under the laws of the State of Colorado ("**Assignor**"), and the URBAN RENEWAL AUTHORITY OF THE CITY OF COMMERCE CITY, COLORADO, a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado ("**Assignee**").

WITNESSETH:

WHEREAS, the City of Commerce City (the "**City**"), Assignor and Assignee entered into that certain Amended and Restated Phased Redevelopment Agreement dated as of dated June 18, 2018 (the "**2018 Agreement**"), wherein Assignor was to serve as the master developer for the approximately 65 acre parcel commonly known as the former Mile High Greyhound Park located in the City (the "**Property**");

WHEREAS, Assignor commenced various work as the master developer, including creating or obtaining, or having others create or obtain on Assignor's behalf, various tangible personal property pertaining to the Property and the Project (as defined in the 2018 Agreement), including but not limited to engineering studies, economic models and plans, public outreach materials, marketing materials, engineering, consulting, architectural and other similar plans, specifications, working drawings and any and all amendments and modifications thereto, relating to the design or construction of the Project, landscape plans, development rights and governmental entitlements (the "**Personal Property**");

WHEREAS, the City, Assignor and Assignee have decided to no longer proceed under the terms of the 2018 Agreement, and, instead, Assignee is retaining Assignor to serve as the owner's representative for the redevelopment of the Property by a third party via an Owner's Representative Services Agreement ("**Owner's Rep Agreement**"), signed contemporaneously herewith; and

WHEREAS, Assignor intends to sell and assign to Assignee all of Assignor's right, title and interest, in and to all Personal Property, and miscellaneous property rights, tangible or intangible, relating to the Property (collectively, the "**Transferred Property**").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby absolutely and unconditionally give, grant, bargain, sell, transfer, set over, assign, convey, release, confirm and deliver to Assignee all of the Transferred Property.

1. Assignor hereby represents and warrants to Assignee title to the Transferred Property against any and all persons claiming the whole or any part thereof by and through Assignor. Assignor further represents and warrants to Assignee that it has good and marketable title to the Transferred Property and that the Transferred Property is free and clear of all liens, prior assignments and any other matters affecting title there were created by, through or under

Assignor, and that no Personal Property prepared as part of the Project is owned by entities or individuals other than Assignor.

2. This Bill of Sale and General Assignment shall survive the term of the Owner's Rep Agreement, and shall be binding upon and inure to the benefit of the successors and assigns of Assignor and Assignee.

3. This Bill of Sale and General Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of Colorado.

IN WITNESS WHEREOF, the undersigned has executed this Bill of Sale and General Assignment as of the day and year first written above.

ASSIGNOR:

REAL ESTATE GENERATION, LLC,
a Colorado limited liability company

By: _____

EXHIBIT C
FEE SCHEDULE

[to be attached]

MHGP Redevelopment
REGen, LLC Repayment Schedule
6/15/2019

| | |
|------------------|-------|
| Interest Rate | 8% |
| REGen, LLC TIF % | 3.00% |

| | |
|---------------|-------------|
| M.D. Payments | \$ 1,666.67 |
| O.R. Payments | \$ 5,000.00 |

| Year | Actual 3rd Party Payments | Actual Deferred REGen Master Developer Fees | Estimated Deferred REGen Owners Rep. Fees | Less: REGen % of Estimated Available TIF Revenue | Less: Actual Current Payment | Actual or Estimated Annual Net Amount | Estimated Cummulative Unpaid Balance or, the "Fee" | Estimated Qtr. Compounded Interest on Unpaid Balance |
|----------------------|---------------------------------|---|---|---|---------------------------------------|--|---|---|
| 2014 | \$ 31,224 | \$ 20,000 | \$ - | \$ - | | \$ 51,224 | \$ 51,224 | \$ 1,901 |
| 2015 | \$ 25,854 | \$ 20,000 | \$ - | \$ - | | \$ 45,854 | \$ 98,979 | \$ 7,531 |
| 2016 | \$ 202,954 | \$ 20,000 | \$ - | \$ - | | \$ 222,954 | \$ 329,464 | \$ 16,752 |
| 2017 | \$ 37,497 | \$ 20,000 | \$ - | \$ - | | \$ 57,497 | \$ 403,713 | \$ 31,941 |
| 2018 | \$ 34,061 | \$ 20,000 | \$ - | \$ - | | \$ 54,061 | \$ 489,715 | \$ 38,687 |
| 2019 | \$ - | \$ - | \$ 60,000 | \$ - | \$ (431,590) | \$ (371,590) | \$ 156,812 | \$ 29,182 |
| 2020 | \$ - | \$ - | \$ 60,000 | \$ - | | \$ 60,000 | \$ 245,993 | \$ 18,392 |
| 2021 | \$ - | \$ - | \$ 60,000 | \$ - | | \$ 60,000 | \$ 324,386 | \$ 24,854 |
| 2022 | \$ - | \$ - | \$ - | \$ (1,003) | | \$ (1,003) | \$ 348,237 | \$ 28,758 |
| 2023 | \$ - | \$ - | \$ - | \$ (22,350) | | \$ (22,350) | \$ 354,646 | \$ 29,964 |
| 2024 | \$ - | \$ - | \$ - | \$ (35,754) | | \$ (35,754) | \$ 348,855 | \$ 29,969 |
| 2025 | \$ - | \$ - | \$ - | \$ (41,914) | | \$ (41,914) | \$ 336,911 | \$ 29,135 |
| 2026 | \$ - | \$ - | \$ - | \$ (45,196) | | \$ (45,196) | \$ 320,850 | \$ 27,897 |
| 2027 | \$ - | \$ - | \$ - | \$ (46,556) | | \$ (46,556) | \$ 302,191 | \$ 26,373 |
| 2028 | \$ - | \$ - | \$ - | \$ (46,556) | | \$ (46,556) | \$ 282,009 | \$ 24,709 |
| 2029 | \$ - | \$ - | \$ - | \$ (46,556) | | \$ (46,556) | \$ 260,162 | \$ 22,909 |
| 2030 | \$ - | \$ - | \$ - | \$ (46,556) | | \$ (46,556) | \$ 236,515 | \$ 20,959 |
| 2031 | \$ - | \$ - | \$ - | \$ (46,556) | | \$ (46,556) | \$ 210,918 | \$ 18,849 |
| 2032 | \$ - | \$ - | \$ - | \$ (46,556) | | \$ (46,556) | \$ 183,212 | \$ 16,565 |
| 2033 | \$ - | \$ - | \$ - | \$ (46,556) | | \$ (46,556) | \$ 153,221 | \$ 14,093 |
| 2034 | \$ - | \$ - | \$ - | \$ (46,556) | | \$ (46,556) | \$ 120,758 | \$ 11,417 |
| 2035 | \$ - | \$ - | \$ - | \$ (46,556) | | \$ (46,556) | \$ 85,620 | \$ 8,521 |
| 2036 | \$ - | \$ - | \$ - | \$ (46,556) | | \$ (46,556) | \$ 47,584 | \$ 5,385 |
| 2037 | \$ - | \$ - | \$ - | \$ (46,556) | | \$ (46,556) | \$ 6,414 | \$ 1,992 |
| 2038 | \$ - | \$ - | \$ - | \$ (8,406) | | \$ (8,406) | \$ - | \$ - |
| 2039 | \$ - | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - |
| 2040 | \$ - | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - |
| 2041 | \$ - | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - |
| 2042 | \$ - | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - |
| 2043 | \$ - | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - |
| 2044 | \$ - | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - |
| 2045 | \$ - | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - |
| 2046 | \$ - | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - |
| 2047 | \$ - | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - |
| 2048 | \$ - | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - |
| Total Project | \$ 331,590.42 | \$ 100,000.00 | \$ 180,000.00 | \$ (666,737.58) | \$ (431,590.42) | | | |