

**Walsenburg Wellness Center
Memorandum of Understanding**

This Memorandum of Understanding regarding the operation of the Wellness Center at 611 Main Street in Walsenburg, Colorado (this “**Agreement**” or “**611 Main Wellness Center MOU**”) is made as of this 1st day of December, 2023 (the “**Effective Date**”) by and between the following entities:

- A. Huerfano County, a political subdivision of the State of Colorado (the “**County**”)
- B. Two Peaks Fitness Inc., a Colorado Non-Profit Corporation (“**TPF**”)

The above-listed parties may be referred to individually as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, The County and TPF, along with the Huerfano Parks and Recreation District, have previously entered into an MOU for the operation of a fitness center at 611 Main Street in Walsenburg, Colorado (“611 Main Wellness Center”); and

WHEREAS, the County and TPF are entering into this agreement to clarify and restate the relationship between the parties; and

WHEREAS, the parties have adopted a shared goal for the 611 Main Wellness Center to be sustainable within the term of this agreement.

AGREEMENT

In consideration for the promises herein, the recitals, and other good and valuable consideration, the Parties agree as follows.

Section 1. Wellness Center Operations

- A. The County, in consideration of the public benefit created by the 611 Main Wellness Center and agreements to be performed and observed by TPF, does hereby lease the facility for \$0 per month to TPF, which will operate the 611 Main Wellness Center.
- B. TPF agrees that the 611 Main Wellness Center shall be operated and maintained in such a manner as to be a credit to the County, and shall be made available to all members of the public regardless of race, color, gender, sexuality, creed, national origin, religious preference, or any other classification protected by state, local, or federal law.
- C. TPF will have sole administrative and creative control over the events and activities conducted within and on the premises through the operations of TPF, with the exception of when the TPF rents the 611 Main Wellness Center, or a portion thereof, to an outside group or entity.
- D. The 611 Main Wellness Center may not be used by TPF for the purpose of working or campaigning for the nomination or election to any public office, whether partisan or non-partisan, but TPF shall not be precluded from renting all or part of the premises to persons or entities for political activities.

Section 2. Public and County Use

- A. The County will have the right to use the 611 Main Wellness Center, or any portion thereof, with reasonable notice for governmental purposes.

Section 3. Wellness Center Maintenance

- A. TPF will be responsible for general maintenance and cleaning of the 611 Main Wellness Center, including of all equipment and fixtures on the property.
- B. The County will be responsible for repairs to the building, including any damage to the floor from equipment or other usage.
- C. TPF has the County's permission to place suitable signs on the facility for the purpose of indicating the nature of the business carried on by TPF at the 611 Main Wellness Center, provided however, that such signs shall comply with all applicable laws, ordinances and regulations. This agreement shall serve as the County's consent to any application TPF may submit to the City of Walsenburg as permitting agency.
- D. The Parties understand and agree that some equipment will be purchased and owned by the County and other equipment will be purchased and owned by TPF. Regardless of the ownership TPF will be responsible for routine maintenance. TPF will provide to the County annually, an inventory of all equipment and assets at the 611 Main Wellness Center on forms provided by or in a format specified by the County.
- E. TPF will notify the County of any maintenance issues that exceed their capabilities or constitute an emergency or hazard, including any repair that could lead to an insurance claim. The County may assist either with staff or financially, subject to the approval of the appropriate authority, with any such issues.
- F. The Parties will collaborate and plan to address non-emergency repairs that exceed \$3000 in cost.

Section 5. Capital Improvements

- A. TPF may propose capital improvements over the term of this MOU. The County must review and may either approve or reject any such project.
- B. For the purposes of this MOU capital improvement is defined as any item or project that is permanently affixed to the facility with a value in excess of \$3000.
- C. The County will notify TPF of any capital improvement or project that involves the 611 Main Wellness Center and will work to schedule any such work with TPF to minimize impact on TPF's operations.

Section 6. Financial Considerations.

- A. Utilities. TPF will pay the cost for telephone service at the 611 Main Wellness Center, if they wish to have such service. The County will pay the cost of all other utilities, specifically trash collection, water, gas, and electric, for the 611 Main Wellness Center for the term of this MOU.
- B. Operating Reserve. TPF will maintain an operating reserve of at least \$5,000
- C. Financial Records. TPF will provide any financial or membership records as requested or required by the County Auditor.

Section 7. Insurance.

- A. The County will maintain the same standard property insurance for the 611 Main Wellness Center as it does for all County facilities.

- B. TPF must maintain general liability insurance and name the County as additional insured.

Section 8. Oversight.

- A. The County, through the Administrator or his designee, will review and monitor the operations and performance of TPF under this agreement, including but not limited to review of financial records, membership records, management procedures, and maintenance agreements.

Section 9. Term and Termination.

- A. Term. This additional Agreement shall be in full force and effect from the Effective Date, December 1, 2022, through 11:59 PM on December 31, 2027.
- B. Mutual Termination. This Agreement may be terminated at any time upon the written agreement of both Parties.
- C. Mid-Term Evaluations. The Parties agree to review this agreement as well as the finances and operations of the 611 Main Street Wellness Center on or before December 17, 2024 and on or before December 15, 2026.
- D. Extension. This Agreement may be extended at any time with the agreement of both Parties.

Section 10. General Provisions.

- A. Amendments. Any amendment or addition to this Agreement must be in writing, approved and signed by both Parties to this Agreement.
- B. Further Assurances. Each Party shall execute all further documents and take all further acts reasonably necessary or appropriate to carrying out the intent of this Agreement.
- C. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.
- D. Venue. Venue to any action arising from this Agreement shall lie in the state courts in Huerfano County, Colorado. Each Party submits to the jurisdiction and venue of this court and waives any objection to which it otherwise might be entitled regarding such jurisdiction or venue and any right it may have to remove an action to federal court.
- E. Waiver of Right to Jury Trial. Each party waives any right it has or may have to a jury trial in any action, suit, or proceeding arising out of or in connection with this Agreement.
- F. Independent Contractors. The Parties are independent contractors in all matters concerning this Agreement. Nothing in this Agreement creates a joint venture, partnership, or employment relationship between the Parties. No Party will be liable for the debts, liabilities, or obligations of the other Parties. No Party is acting as the agent of partner of the other Parties or any of them and no Party will hold itself out as such. No Party has the authority to bind the other Parties or any of them.
- G. No Landlord-Tenant Relationship. No provision of this agreement is intended by the parties to constitute or be construed as creating a landlord-tenant relationship between the County and TPF. TPF shall not receive any property interest in the 611 Main Wellness Center under and pursuant to this Agreement, but rather TPF is solely receiving the contractual right to operate the 611 Main Wellness Center on behalf of the County subject to the provisions of this Agreement and to

undertake and oversee the maintenance, operation, and repair of the 611 Main Wellness Center as contemplated by this Agreement.

- H. Subject to Annual Appropriations. This Agreement is subject to the County making an annual budget appropriation in an amount sufficient to fund expenditures under this Agreement. If the County fails or refuses to make such an appropriation, the County reserves the right to terminate this Agreement.
- I. Force Majeure. No Party will be considered in default under this Agreement to the extent that such performance is delayed or prevented by fire, flood, hurricane, tornado, earthquake, other natural disaster, pandemic or other state or county declared health emergency, riot, war, terrorism, labor disputes, or civil strife.
- J. Entire Agreement. This Agreement states the entire agreement among the Parties with respect to the subject matter of this Agreement and supersedes and replaces all previous discussions, negotiations, and agreements.
- K. Waiver. The failure of any Party to insist upon the performance of any provision of this Agreement or to exercise any right or privilege granted to such Party under this Agreement will not be construed as waiving such provision or any other provision of this Agreement.
- L. Severability. If any provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability will not invalidate the remaining provisions of this Agreement.
- M. Counterparts. This Agreement may be executed and delivered in counterparts (including by means of electronic signature), all of which taken together will constitute one and the same agreement.

[Remainder of page intentionally left blank.]

The Parties are executing this Agreement to signify their acceptance of all the terms and conditions stated above, to be effective as of the Effective Date, regardless of the date of actual signature.

Huerfano County, Acting by and through its Board of County Commissioners

By: _____

Date Signed: _____

Name: John Galusha

Title: Chairman, Board of County Commissioners

Attest:

By: _____

Date Signed: _____

County Clerk and Recorder

Two Peaks Fitness, Inc.

By: _____

Date Signed: _____

Name: _____

Title: _____

Attest:

By: _____

Date Signed: _____

Name: _____

Title: _____