

FIFTH AMENDMENT TO PURCHASE AND SALE AGREEMENT FOR THE MILE HIGH GREYHOUND PARK PROJECT

This FIFTH AMENDMENT TO PURCHASE AND SALE AGREEMENT (this “**Fifth Amendment**”) is entered into effective as of August ___, 2020, 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 (“**Seller**”), GREYHOUND PARK LLC, a Colorado limited liability company (“**Buyer**”), and CITY OF COMMERCE CITY, COLORADO, a home rule municipality under the laws of the State of Colorado (“**City**”). Seller, Buyer and City shall sometimes hereinafter be referred to individually as the “**Party**” and collectively as the “**Parties**.”

RECITALS

A. Seller, Buyer and City are parties to that certain Purchase and Sale Agreement dated June 17, 2019, as amended by that certain (i) First Amendment to Purchase and Sale Agreement dated effective August 19, 2019 (“**Original Agreement**”), and (ii) Second Amendment to Purchase and Sale Agreement dated effective October 21, 2019, and (iii) Third Amendment to Purchase and Sale Agreement dated effective March 24, 2020, and (iv) Fourth Amendment to Purchase and Sale Agreement dated effective May 28, 2020 (as amended, the “**Purchase Agreement**”), relating to the sale and purchase of the Mile High Greyhound Park located in an urban renewal area in Commerce City, County of Adams, State of Colorado, as more particularly described therein (the “**Property**”). The Parties are also parties to that Amended and Restated Phased Redevelopment Agreement for the Mile High Greyhound Park Project dated June 17, 2019 by and between Seller as the Authority and Buyer as Redeveloper, as amended by that certain (i) First Amendment to Amended and Restated Phased Redevelopment Agreement dated effective March 24, 2020, and (ii) Second Amendment to Amended and Restated Phased Redevelopment Agreement dated effective May 28, 2020, and (iii) Second Amended and Restated Phased Redevelopment Agreement made effective upon the same date as this Fifth Amendment (as amended, the “**MDA**”). Capitalized terms used but not defined herein shall have the meanings given to such terms in the Purchase Agreement unless otherwise stated.

B. Since the effective date of the Original Agreement, and pursuant to the MDA, Buyer has made significant progress with the design for the redevelopment of the Property including obtaining the City’s approval for the Master Subdivision Plat recorded on _____, 2020 at Rec. No. _____; and

C. The Master Subdivision Plat creates new legal descriptions for the Property; and

D. In order to ensure consistency between the legal descriptions under the Master Subdivision Plat and the Second Amended and Restated Phased Redevelopment Agreement, the Parties desire to enter into this Fifth Amendment.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing, the mutual covenants and obligations contained in the Purchase Agreement, the receipt of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. Incorporation of Recitals. The recitals set forth above are incorporated herein and made a part of this Fifth Amendment to the same extent as if set forth herein.

2. Legal Description. Recital A is hereby deleted in its entirety and replaced with the following:

“WHEREAS, Seller is the owner of that real property comprised of the tracts as shown on the Master Subdivision Plat (as defined below) (“Tracts” or each a “Tract”), located in an urban renewal area in Commerce City, County of Adams, State of Colorado, being more particularly described on Exhibit A attached hereto and incorporated herein (“Land”).”

3. Exhibit A. Exhibit A is hereby deleted in its entirety and replaced with an amended and restated Exhibit A attached hereto and incorporated herein by reference.

4. Conveyance Deeds. Section 9(a) shall be deleted in its entirety and replaced with the following:

“Upon the closing of the Property in accordance with the terms of this Agreement (“Closing”), Seller shall convey to Buyer, by Special Warranty Deeds in accordance with this Section and Section 9(c) below, in a form reasonably acceptable to Buyer and proper for recording, and which shall specifically exclude any references to statutory title exceptions, fee simple title to the Property free and clear of any and all encumbrances except for the Permitted Exceptions (“Deeds”). The Deeds shall include the reservation of Seller’s right to repurchase and the reservation of Seller’ right to consent, as further described in Section 9(c) below.

5. Subsequent Conveyances. Section 9(b) shall be deleted in its entirety.

6. Escrowed Deeds, Seller’s Right of Repurchase, and Seller’s Right of Consent to Subsequent Conveyances. Section 9(c) shall be deleted in its entirety and replaced with the following:

“At Closing, Buyer shall execute signed and notarized Deeds for Tracts C1, C2, C3, D1, D3, E, F, and J conveying each respective Tract back to Seller. The Deeds shall remain in escrow pursuant to the Escrow Agreement. The Deeds shall include the following reservations:

i. Upon Seller’s payment to Buyer of Buyer’s pro rata share of monies expended and disbursed for the Improvements (defined in the MDA) based on the acreage of the applicable portion of the Property being repurchased as a percentage of the total acreage of the Property, Seller may exercise its right to repurchase a respective Tract only if defined Event of Default by Buyer under Section 11.1(a)(i), (iv), (vii), or (viii) of the MDA occurs and is continuing under the MDA beyond any notice and opportunity to cure period. Seller’s right to repurchase shall expire upon “initial acceptance” by the City of the infrastructure improvements

for each applicable Tract identified in Exhibits B 1–6 of the Public Improvements Agreement entered into between the City and Greyhound Park, LLC and recorded with the Master Subdivision Plat on [REDACTED], 2020 at Rec. No. [REDACTED]; and

ii. a reservation of Seller's right to consent to any sale by Buyer to an entity that is not an Affiliate (as defined in the MDA) of Buyer which consent right shall expire upon receipt of the first certificate of occupancy in connection with the applicable Tract

However, in all cases, Seller agrees that both the right to repurchase, and the escrowed Deeds shall be subject to the rights of the holder of "**Superior Instrument(s)**" which shall mean the grantor or holder of a lien, deed of trust, mortgage or any other security interest (whether executed prior to or after Closing) affecting all or any portion of the Property (together with all amendments, extensions, renewals, replacements and modifications thereof, each, a "Superior Instrument") as follows:

[REDACTED]. To the extent the applicable Property being repurchased has been encumbered with Superior Instruments, easements or other encumbrances which were not Permitted Exceptions at the time of Seller's conveyance to Buyer, or otherwise approved by Seller or City, Buyer shall promptly cooperate with Seller to release, or cause the release of said Superior Instruments, easements or other encumbrances, at Buyer's cost and expense. At Closing, Buyer shall also execute a quit claim Bill of Sale conveying title to the Plans and all plans for the Improvements back to Seller, in addition to a Quit Claim Deed conveying back any rights of way, easement, and/or other infrastructure conveyed for a respective Tract, if any, all pursuant to the Escrow Agreement and the MDA, in the event Seller exercises its right to repurchase pursuant to this Section 9(c)."

7. Authority. Each Party represents and warrants that it has the power and authority to execute this Fifth Amendment and that there are no third party approvals required to execute this Fifth Amendment or to comply with the terms or provisions contained herein.

6. Headings. The section headings herein shall have absolutely no legal significance and are used solely for convenience of reference.

7. Counterparts and Facsimile. This Fifth Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed to constitute one and the same instrument. Each of the Parties hereto shall be entitled to rely upon a counterpart of the instrument executed by the other Party and sent by facsimile or email transmission.

[signatures appear on the following page]

IN WITNESS WHEREOF, the Parties have executed this Fifth Amendment as of the date above first written.

SELLER:

Commerce City Urban Renewal Authority, a Colorado body corporate duly organized and existing as an urban renewal authority

By: _____
Name: Benjamin Huseman, Chairperson
Date: _____

CITY:

City of Commerce City, a home rule city organized under the laws of Colorado

By: _____
Name: Benjamin Huseman, Mayor
Date: _____

ATTEST:

Laura J. Bauer, MMC, City Clerk

BUYER:

GREYHOUND PARK LLC, a Colorado limited liability company

By: _____
Name: Joe DelZotto
Its: Authorized Signatory
Date: _____

**AMENDED AND RESTATED EXHIBIT A
OF THE PSA**

Land Legal Description

ALL OF TRACTS C1, C2, C3, D1, D2, D3, E, F, and J
MILE HIGH GREYHOUND PARK SUBDIVISION, RECORDED [REDACTED], 2020 AT
RECEPTION NO. [REDACTED] IN THE OFFICIAL RECORDS OF THE CLERK AND
RECORDER OF ADAMS COUNTY, COLORADO.

Amended and Restated Exhibit A to the Purchase and Sale Agreement