

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into June ____, 2019 ("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 ("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 or Buyer or City may be referred to individually as "Party" or collectively as "Parties."

RECITALS

A. WHEREAS, Seller is the owner of that real property comprised of Blocks 3-13 (each a "Block") of the Mile High Greyhound Park 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"); and

B. WHEREAS, in May 2016, Seller, City, and Real Estate Generation, LLC ("ReGen") entered into a Phased Redevelopment Agreement, and on June 18, 2018, Seller, City and ReGen entered into an Amended and Restated Phased Redevelopment Agreement wholly replacing the 2016 Phased Redevelopment Agreement ("2018 Agreement"); and

C. WHEREAS, in June, 2016, Seller publicly noticed a request for development proposals and listed the Property (as defined herein) for sale, constituting the reasonable competitive bidding procedures for the disposition of real property to private persons pursuant to Section 31-25-106 of the Colorado Revised Statutes, and Buyer was the only party that submitted a proposal; and

D. WHEREAS, City, Seller, and ReGen have decided to no longer proceed under the terms of the 2018 Agreement, and have instead agreed that, on or about the Effective Date, Seller and Buyer shall enter into that certain Amended and Restated Phased Redevelopment Agreement outlining the terms under which Buyer shall develop the Property ("MDA"); and

E. WHEREAS, Seller, Buyer, and City have worked together to develop the terms of this Agreement; and

F. WHEREAS, Buyer intends to develop modern, mixed income housing, with a diverse range of product types on the Land, to eliminate blight and support the success and sustainability of a community suffering from an aging housing stock; and

G. WHEREAS, Seller and Adams County entered into that certain Property Tax Increment Revenue Agreement dated November 14, 2017 ("County IGA"), that requires an affordable housing component within the Land; and

H. WHEREAS, Seller and Adams 14 School District entered into that certain Property Tax Increment Revenue Agreement dated April 16, 2018 ("School District IGA"), that requires payment for the construction of two modular units up to an amount of \$330,000; and

I. WHEREAS, Seller wishes to sell and Buyer wishes to purchase the Property subject to the conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals which are incorporated herein, promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. **Purchase and Sale of Property.** Subject to the conditions and terms of this Agreement, Seller shall sell the Land to Buyer, and Buyer shall purchase the Land from Seller, together with all and singular the rights and appurtenances pertaining thereto, including, without limitation, any and all right, title, and interest in and to the following (collectively, the “Property”):

- (a) fee simple interest in the Land; and
- (b) to the extent transferable or assignable without any cost to Seller, permits, licenses, rights, easements, authorizations, entitlements, vested rights and approvals issued by or pending with any governmental authority with respect to the Property; and
- (c) to the extent transferable or assignable without any cost to Seller, Seller’s interest in any plans, drawings, specifications, surveys, engineering reports, environmental studies, groundwater tests, drainage reports, flood plain maps, soils reports and other technical reports relating to the Property (collectively, the “Plans”); and
- (d) to the extent transferable or assignable without any cost to Seller, utility agreements and utility service letters which pertain to the Property; and
- (e) all rights to have the Property served by water and sewer, together with any existing water and sewer taps pertaining to the Property and any other utility rights pertaining to the Property; and
- (f) any and all right, title and interest of Seller in and to adjacent streets, sidewalks, alleys, strips and gores, and rights-of-way, together with any and all improvements and fixtures owned by Seller and situated on or attached to the Land; and
- (g) expressly reserving to Seller and not including within the Property, Seller’s right, title, and interest to all water and water rights, ditch and ditch rights, reservoirs, water wells and well rights, whether tributary or nontributary, on, underlying, appurtenant to or used or to be used on or in conjunction with Land, whether appropriated, conditionally appropriated or unappropriated, and whether adjudicated or unadjudicated, including, without limitation, any and all rights of use, reuse and successive use, including all recirculated irrigation water supplies, surface runoff, irrigation return flow, and domestic municipal affluent flows, and including well permits, permit applications, decrees, pending water court applications, well registration statements and any well equipment, personalty, fixtures, transmission lines and

related equipment used for the supply, storage, treatment and distribution of such water and water rights; and

(h) expressly reserving to Seller and not including within the Property, Seller's right, title, and interest to all minerals and mineral rights, including, but not limited to, all gravel, sand, oil, gas, and other liquid hydrocarbon substances, casinghead gas, coal, carbon dioxide, helium, geothermal resources, and all other naturally occurring elements, compounds and substances, whether similar or dissimilar, organic or inorganic, metallic or nonmetallic in whatsoever form and whether occurring, found, extracted or removed in solid, liquid or gaseous state or in combination, association or solution with other mineral or non-mineral substances, regardless of their intended use or current commercial value in or under the Land (collectively, "Minerals").

2. **Conveyance of Property.** Seller represents, warrants and covenants that it shall convey the Property to Buyer and Buyer represents warrants and covenants that it shall acquire the Property from Seller for a purchase price of Nine Million Five Hundred Thousand and No/100 dollars (\$9,500,000.00) ("Purchase Price").

3. **Earnest Money.** The Parties acknowledge that upon execution of that certain Letter of Intent dated March 22, 2019, Buyer began in good faith incurring expenses for engineering and reporting related costs associated with the design of general infrastructure for the Property in order to further its development including, but not limited to, stormwater drainage, water, sewer, transportation, and the like expressly excluding the Regional Storm Water Facility as defined herein ("Preliminary Engineering Fees"). Subject to Section 3(a) below, Buyer agrees to spend no more than Three Hundred Thousand and No/100 dollars (\$300,000.00) on Preliminary Engineering Fees. Buyer shall provide Seller with copies of the monthly invoices for completed engineering work and cause its consultant to provide itemized explanations of the invoices upon request from Seller. The total amount of the Preliminary Engineering Fees incurred by Buyer as of the date of inquiry and evidenced by invoices shall be the ("Earnest Money").

(a) **Refundable.** The Earnest Money may be increased above the \$300,000.00 cap by mutual written agreement of Buyer and Seller, with Seller's Executive Director being authorized to provide this written agreement on behalf of Seller. The Earnest Money shall be fully refundable to Buyer during the Due Diligence Period, as defined in Section 7. If Buyer notifies Seller in writing, on or prior to the expiration of the Due Diligence Period that Buyer desires to terminate this transaction pursuant to the conditions of this Agreement, Seller shall refund Earnest Money to Buyer so long as Buyer has been providing Seller with copies of the monthly invoices for engineering work and a summary of the related costs incurred, this Agreement shall be null and void, and no Party shall have any further liability or responsibility related to this transaction, except for such rights and obligations that by their terms expressly survive the termination of this Agreement ("Surviving Obligations"). Buyer hereby agrees to deliver to Seller copies of all Reports (as defined in Section 7) completed by third parties at the time any notice to terminate this Agreement is delivered. Buyer's obligation to deliver the Reports shall survive the termination of this Agreement; and in no event shall any Earnest Money be returned to Buyer hereunder until all Reports have been delivered to Seller.

(b) Applied to Purchase Price. The Earnest Money shall be credited to the Purchase Price pursuant to the terms and conditions of that certain Escrow Agreement attached hereto as **Exhibit B** and incorporated herein ("Escrow Agreement").

(c) Purchase Price and Property Improvements. At Closing, Buyer shall deposit the Purchase Price into escrow pursuant to the terms of the Escrow Agreement. Parties agree that the entirety of the Purchase Price, less the Preliminary Engineering Fees ("Buyer's Escrow Funds"), shall then be available for use by Buyer, pursuant to the Escrow Agreement and the MDA, for the Improvements (defined below) and the School District Payment (as defined in Section 11(b) below). "Improvements" means those infrastructure improvements more particularly described in Exhibit C to the MDA.

(d) Overage and Underage. If the entirety of Buyer's Escrow Funds are disbursed, but the Improvements have not been completed, Buyer shall be responsible for any remaining costs to complete the Improvements ("Overage"), provided that Seller shall be responsible for any Overage that results from a change to the Improvements at the direction of Seller or City which departs from the approved Design Guidelines, approved Master Subdivision Plat or approved PUD Permit. If the Improvements have been completed but there are remaining Buyer's Escrow Funds ("Buyer's Escrow Funds Underage"), pursuant to the Escrow Agreement, Buyer's Escrow Funds Underage shall be applied first to the Redeveloper's Reimbursement (as defined in the MDA), then to the Regional Storm Water Facility, then to either completion of infrastructure improvements to the Commercial Block or infrastructure improvements to the Education Block.

4. **Due Diligence.** Seller shall complete and deliver to Buyer the following information and documentation:

(a) Within thirty (30) days following the Effective Date, Seller shall deliver to Buyer complete and legible copies of the following documents relating to the Property that are in the control or possession of Seller (collectively, "Due Diligence Materials"), including but not limited to (i) the Insurance Policy as defined in Section 5; (ii) the feasibility study funded by the federal grant; (iii) urban drainage regional flood plain report; (iv) Water Sufficiency Confirmation pursuant to Section 11(d) below; and (v) agreements required by HB 1348 between the Seller and any taxing district. If, within the thirty (30) days following the Effective Date, Buyer believes Seller may possess documents in addition to the Due Diligence Materials helpful to Buyer's diligence of the Property, Buyer shall request said documents in writing and Seller shall use reasonable efforts to locate said documents and, within ten (10) days, either provide written notice to Buyer that Seller was not able to locate said documents or produce said documents.

(b) Seller's failure to deliver or make available to Buyer all of the Due Diligence Materials identified in Section 4(a) above shall, in Buyer's discretion, result in a default by Seller hereunder, and Buyer's sole remedy for such failure shall be Buyer's right to terminate this Agreement by delivering written notice thereof to Seller within five (5) days of receipt of Seller's written response described in Section 4(a), and Buyer shall receive a full refund of the Earnest Money.

5. **“As Is” Purchase.** Buyer acknowledges that Seller shall convey the Property to Buyer in the Property’s “AS IS, WHERE IS, AND WITH ALL FAULTS” condition as of the Closing. Buyer accepts and agrees to bear all risks regarding all attributes and conditions, latent or otherwise, of the Property subject to this Section 5. Parties acknowledge that the environmental status of the property is unknown. During the Due Diligence Period (as defined in Section 7 below), Buyer shall inspect and investigate the Property and engage such qualified agents, contractors, engineers or consultants, including, without limitation, environmental consultants, as Buyer deems necessary to make all appropriate inquiry regarding the condition of the Property and adjacent property, including, without limitation, the presence thereon, or the condition thereof with respect to, any hazardous materials. Buyer further acknowledges and agrees that any information provided or to be provided with respect to the Property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and makes no representation as to the accuracy, truthfulness or completeness of such information. If Buyer’s inspection and investigation of the Property reveals the presence of any hazardous materials, Buyer shall notify Seller. If Buyer does not terminate this Agreement pursuant to a termination right of Buyer under this Agreement during the Due Diligence Period, then, Buyer, shall acquire and accept the Property in its then-existing condition on an “AS IS, WHERE IS, AND WITH ALL FAULTS” basis, with no right of set-off or reduction in the Purchase Price.

Buyer shall purchase the Property based solely upon Buyer’s own inspection and investigation and not in reliance on any statement, representation, inducement or agreement of Seller. Buyer acknowledges that neither Seller nor anyone acting on behalf of Seller has made (or has an obligation to Buyer to make) any representation, guarantee or warranty whatsoever, either written or oral, concerning the Property.

Seller represents that it has obtained an environmental liability insurance policy from Great American Insurance effective September 18, 2012, Policy No. PEL394905200, as amended (“Insurance Policy”). Within ten days from the Effective Date, Seller shall request that the policy holder name Buyer as an additional insured under the Insurance Policy (“Additional Insured”) and provide written evidence of the same to Buyer. Seller’s failure to add Buyer as an Additional Insured on or before the expiration of the Due Diligence Period, shall, in Buyer’s discretion, result in a default by Seller hereunder, and Buyer’s sole remedy for such failure shall be Buyer’s right to terminate this Agreement by delivering written notice thereof to Seller on or before the expiration of the Due Diligence Period and Buyer shall receive a full refund of the Earnest Money.

The provisions of this Section 5 shall survive the Closing indefinitely and shall not be merged into the Deed.

6. **Title Review Period.**

(a) **Title Commitment and Survey Review Period.** Within ten (10) days after the Effective Date, Buyer shall obtain, with a copy to Seller, from the Title Company an Owner’s Title Policy Commitment on an ALTA Form 2006 covering the Property (“Title Commitment”), together with copies of all documents and instruments referred to therein (collectively, “Title Documents”), such Title Commitment to be in the amount of \$9,500,000.00 and dated not earlier

than the Effective Date, showing fee simple title to the Property held by Seller. Buyer shall have a period of thirty (30) days ("Title Commitment Objection Period") after Buyer's receipt of the Title Documents in which to object to such items or any matters disclosed therein. The date on which Buyer has received the Title Documents may be referred to herein as the "Title Documents Delivery Date." In addition, Buyer shall obtain, with a copy to Seller, an ALTA/NSPS survey of the Property ("Survey"), at Buyer's sole cost and expense. Buyer shall have a period which is the lesser of (1) thirty (30) days after Buyer's receipt of the Survey; and (2) fifty (50) days from the Effective Date ("Survey Objection Period"), in which to object to such items or matters disclosed on the Survey.

If Buyer shall fail to give any notice to Seller during the Title Commitment Objection Period or the Survey Objection Period, Buyer shall have waived its rights to object to the Title Documents and the Survey, subject to Section 6. Those Title Documents or Survey matters not objected to (or waived, as hereinafter provided) by Buyer shall be referred to as "Permitted Exceptions." If Buyer objects to any such item(s) during the Title Commitment Objection Period or the Survey Objection Period, Seller shall have ten (10) days thereafter ("Cure Period") to cure or correct such item(s) to Buyer's satisfaction or commit to do so in writing; provided, however, Seller has no obligation to cure any such matters except voluntary mortgages, deeds of trust, mechanics liens, judgment liens or similar monetary liens or encumbrances created by or through Seller. If Seller shall fail during the Cure Period to cure, commit to cure or correct any such title objection noted by Buyer (or commit to do so in writing), then Buyer may elect to do either of the following by delivering written notice thereof to Seller within three (3) business days after the expiration of the Cure Period: (a) terminate this Agreement whereupon all Earnest Money shall be refunded to Buyer; or (b) waive such title objection(s) or Survey objection(s) and proceed to close the transaction contemplated herein. Buyer's failure to make a timely election under the preceding sentence shall be deemed to constitute Buyer's election to waive such title objection(s). As used herein, "Permitted Exceptions" shall include the following: (i) a lien for real property taxes and assessments not then delinquent; (ii) title matters respecting the Property approved or deemed approved by Buyer in accordance with the provisions of this Section 6; and (iii) matters affecting the condition of title to the Property created by or with the written consent of Buyer.

7. **Due Diligence Period.** Buyer's obligations under this Agreement are expressly contingent upon Buyer's satisfaction or waiver, each in Buyer's sole and absolute discretion, of all matters pertaining to the Property and use and development thereof, including but not limited to the Due Diligence Materials. Buyer has a period commencing on the Effective Date and ending at 5:00 p.m., MST, sixty-five (65) days later ("Due Diligence Period") to complete such inspections, reviews, studies, verifications and assessments (collectively, the "Reports") and due diligence which Buyer deems appropriate. All such inspections, etc. shall be performed at Buyer's sole cost and expense. If Buyer determines, in its sole discretion, for any reason or no reason that the Property is not suitable for Buyer's purposes, then Buyer may terminate this Agreement by delivering written notice thereof to Seller on or before the expiration of the Due Diligence Period and Seller shall refund Earnest Money to Buyer. Buyer's failure to provide a written termination notice to Seller on or before the expiration of the Due Diligence Period shall be deemed to constitute Buyer's election to waive the Due Diligence Period and proceed to Closing, subject to the closing conditions and deliverables set forth in Section 10 and Section 13.

8. **Right of Entry.**

(a) **Buyer's Inspection.** Buyer or Buyer's authorized agents shall have the right at all times to enter upon the Property for inspection and assessment, including without limitation making such inspections, surveys, site analysis, test borings and engineering studies (collectively, the "Inspection Work"), as Buyer may deem necessary. Notwithstanding the foregoing, Buyer shall obtain Seller's prior written approval regarding the scope and method of any environmental testing or investigation (other than a non-intrusive Phase I environmental inspection) and shall not perform any substance characterization testing related to suspected hazardous materials encountered during any phase of Buyer's work without first obtaining written approval from Seller; however, such approval shall not be unreasonably withheld. Seller agrees to cooperate with Buyer for the Inspection Work made by or at Buyer's direction, provided that entry to the Property for the purposes of invasive or intrusive Inspection Work shall only be conducted if a Seller representative is present and upon two (2) business days advance notice to Seller's representative. If a Seller representative is not present, Buyer may not proceed with any invasive or intrusive Inspection Work. If the Seller representative identifies any issues during the Inspection Work, Seller may immediately halt the Inspection Work until further discussions, analysis and potential notice under the Insurance Policy is accomplished. Buyer shall, and shall cause any consultant to, take all reasonable precautions to avoid any damage to the Property from the activities of its employees, contractors, or equipment. Buyer shall share the results of any Inspection Work with Seller, including any Inspection Work that occurred prior to execution of this Agreement, which Seller may use for any purpose.

(b) **Restoration.** Buyer shall restore the Property to as safe a condition as existed prior to Buyer's use, to the extent reasonably practicable, including without limitation the filling of any holes created by the use, grading as necessary related to the use, and removal of any rubbish or debris generated by the use, upon completion of any work under this Agreement or the termination of the Agreement, whichever occurs first. Buyer shall repair damages caused on the Property or adjoining lands arising out of Buyer's inspections when caused by the exercise of the rights or obligations of Buyer under this Agreement. If such damages are not restored by Buyer, after the provision of notice and an opportunity to cure, Buyer shall reimburse Seller for Seller's out of pocket costs to repair such damages.

(c) **Mechanic's Liens.** Buyer shall keep the Property free and clear of any mechanic's liens and other liens on account of work done or performed on behalf of the Buyer.

(d) **Insurance.** Before commencing any activities on the Property, Buyer shall procure and provide evidence to Seller of: (i) commercial general liability insurance in an amount of not less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate; (ii) coverage at not less than statutory limits for claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts; and (iii) if applicable, automobile liability insurance, including coverage for non-owned and hired vehicles with a combined single limit for bodily injury and property damage of one million dollars (\$1,000,000.00). All such policies shall be kept in full force and effect during all times that Buyer is performing work on the Property. Buyer shall cause Seller and the City of Commerce City to be named as an additional insured on such policies of insurance and shall provide a certificate of insurance to Seller. Any such policies shall be primary and non-

contributory. Buyer shall waive its rights of subrogation aside from the sole negligence of the Seller.

9. **Deeds.**

(a) **Conveyance.** 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 9(c) below and 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 (“Deed(s)”). The Deeds shall include (1) a reservation of Seller’s right to repurchase pursuant to Section 9(c) below which shall expire upon completion of the Improvements on each respective Block; and (2) reservation of Seller’s consent right to any sale of a respective Block by Buyer to a non-affiliated entity pursuant to the MDA which shall expire upon completion of the vertical development of each respective Block. The legal description of the Property used in the Deeds shall be the legal description created by the Master Subdivision Plat. In no event shall mortgages, deeds of trust, monetary liens, mechanic’s or materialmen’s liens, leases or financial encumbrances be deemed permitted exceptions (“Lien and Lease Exceptions”), and Seller shall pay (at or prior to Closing) any amount due in order to satisfy or remove from record title any Lien and Lease Exceptions. Alternatively, with the written consent of Buyer, Seller shall bond over any Lien and Lease Exceptions in order to remove the same from record title but only if Seller provides Buyer with a copy of the applicable bond at or prior to Closing and holds Buyer harmless from and indemnifies Buyer for any liability incurred as a result of Seller bonding over the applicable Lien and Lease Exception; this obligation to hold Buyer harmless and indemnify Buyer shall survive Closing.

(b) **Subsequent Conveyances.** If requested by Buyer following Closing, Buyer shall record a signed and notarized Special Warranty Deed conveying one or more of Blocks 6-12 (as depicted on Exhibit B-3 to the MDA) of the Property back to Seller under the same Permitted Exceptions, for ten (\$10.00) dollars and no additional consideration, pending the issuance of building permits, at which time, or upon any other time requested by Buyer, Seller shall record a signed and notarized deed conveying the portions of the Property as requested back to Buyer by special warranty deed under the same Permitted Exceptions, for ten (\$10.00) dollars and no additional consideration. In such event, Buyer shall provide Seller with an appropriate general liability insurance policy covering those portions of the Property subject to said deed free and clear of any encumbrances and Buyer and Seller shall enter into necessary license agreements to allow Buyer to perform the Improvements on those portions of the Property. If the Adams County Assessor imposes property taxes on one or more of Blocks 6-12 despite Buyer conveying them back to Seller, Buyer acknowledges that Buyer shall be responsible for all property tax payments, subject to Buyer’s ability to appeal. This Section 9(b) shall survive Closing for a period of ten (10) years.

(c) **Right to Repurchase.** At Closing, Buyer shall execute signed and notarized Deeds for each Block conveying each respective Block back to Seller. The Deeds shall remain in escrow pursuant to the Escrow Agreement. Upon Seller’s payment to Buyer of Buyer’s pro rata share of monies expended and disbursed for the Improvements based on the acreage of the applicable portion of the Property being repurchased in relation to the total

acreage of the Property, Seller may exercise its right to repurchase a respective Block 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. To the extent the applicable Property being repurchased has been encumbered with any loans, easements or other encumbrances which were not Permitted Exceptions at the time of Seller's conveyance to Buyer, Buyer shall promptly cooperate with Seller to release, or cause the release of, said encumbrances, at Buyer's cost and expense.

The Deeds containing Seller's rights to repurchase shall expressly expire (1) upon completion of the Improvements on each respective Block, and (2) if Seller has not consented to the sale of any particular Block by Buyer to a non-affiliated entity pursuant to the terms of the MDA, prior to the date vertical development has occurred on each respective Block. At Closing, Buyer shall also execute a quit claim Bill of Sale conveying title to the Plans back to Seller, in addition to a Quit Claim Deed conveying back any rights of way, easements, and/or other infrastructure conveyed for a respective Block, 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).

10. **Closing.**

(a) **When Closing Occurs.** Closing shall occur within thirty (30) days after the occurrence of both of the following: (1) Buyer receives a final subdivision plat approved by the City and recorded in the County of Adams that identifies and dedicates all roads, right-of-way, wet and dry utilities, and landscaping for the Property as required by the City's Subdivision Code and agreed upon by the Parties ("Master Subdivision Plat"); and (2) Seller has placed the Affordable Housing Funds (as defined in Section 11(c)) and the City has placed the Regional Storm Water Facility funds (as defined in Section 19) in escrow pursuant to the Escrow Agreement or other assurance by Seller and City, as acceptable to Buyer in Buyer's sole discretion. Alternatively, Buyer may elect at its sole discretion to proceed to Closing prior to the satisfaction of conditions (1) or (2) in this Section 10(a) ("Early Closing"). In the event Buyer elects an Early Closing, Closing may occur twenty-three (23) days after Buyer has given Seller notice of such election to allow for an Updated Commitment, or earlier upon mutual agreement by Buyer and Seller.

(b) **Updates.** As a condition of Closing, Buyer shall: At least ten (10) days, but no more than thirty (30) days, prior to Closing, cause the Title Company to provide, at Buyer's expense, an updated title insurance commitment ("Updated Commitment") for the Property, together with copies of restrictions, liens or encumbrances or other title matters not previously approved as a Permitted Exception on the Title Commitment. If title as shown on the Updated Commitment reflects title exceptions other than the Permitted Exceptions (each a "New Exception"), then Buyer shall have the right to object to any such New Exception by delivering written notice to Buyer of such objection within five (5) days following receipt of the Updated Commitment. If Buyer so objects to any New Exception, Seller shall have five (5) days to cure or correct such items to Buyer's satisfaction or commit to do so in writing; provided, however, Seller has no obligation to cure any such matters except voluntary mortgages, deeds of trust, mechanics liens, judgment liens or similar monetary liens or encumbrances created by or through Seller. If Seller fails to either cure such objection within the five (5) days or cause the Title Company to insure over the same, then Buyer shall, on or

before the earlier of three (3) business days after the expiration of the five (5) days or the Closing, elect to either: (i.) accept title as it then stands and close; or (ii.) terminate this Agreement. If Buyer fails to give any notice to Seller of objection to a New Exception, Buyer shall have waived its rights to object to the Updated Commitment.

(c) Outside Closing Date. If the condition set forth in Section 10(a)(2) above has occurred and the Closing has not occurred by April 1, 2020, either Party may terminate this Agreement by delivering written notice thereof to the other Party, or the Parties may mutually agree in writing to extend the Closing provided neither party is in Default. If either Party terminates this Agreement, the Parties shall have no further rights or obligations hereunder, except for those that expressly survive termination.

11. Additional Provisions

(a) Parks, Open Space, and Recreation Dedications. Buyer's public land dedications for parks, open space, recreation, storm water improvements, streets, fire or other public facilities required for development and use of the Property shall not exceed those amounts agreed upon by the Parties and set forth in the Master Subdivision Plat.

(b) School District Payment. Pursuant to the School District IGA, Buyer shall not be required to make a land dedication for local schools based on development of the Property but shall be required to pay land dedication fee-in-lieu development fees associated with the Property. As part of the Purchase Price, Buyer shall be responsible for making the payment for the construction of two modular units, as further set forth in the School District IGA, which shall not to exceed \$330,000.00 ("School District Payment").

(c) Affordable Housing.

i. It is acknowledged that under the County IGA, the County of Adams will require the completion of housing that meets certain conditions for affordability. Buyer and Seller agree to cooperate in addressing any financing gaps that may arise from the development of affordable housing. At Closing, and subject to approval and allocation, Seller shall deposit into escrow, pursuant to the Escrow Agreement, Three Million Seven Hundred and Fifty Thousand Dollars (\$3,750,000.00) ("Affordable Housing Funds") toward said financing gaps to be either (i) a grant to the Commerce City Housing Authority for the benefit of Buyer; or (ii) used to make a direct cash-flow loan to Buyer at a rate of interest customary with other affordable, Low Income Housing Tax Credit ("LIHTC") municipal loan rates. If the Affordable Housing Funds are not deposited into Escrow at Closing by Seller, Seller shall provide Buyer at Closing with an alternative funding source acceptable to Buyer which shall allow Buyer to meet the requisite affordability conditions.

If the Affordable Housing Funds are not secured by March 1, 2020, Buyer may choose to waive condition (2) in Section 10(a) and proceed to Closing, in which instance, the Affordable Housing Funds shall be paid to Buyer over time upon Seller's receipt of Incremental Taxes (as defined in the MDA) from the Adams County Treasurer until the earlier of: (a) Incremental Taxes no longer being received by Seller, or (b) Buyer being paid the Affordable Housing Funds. Buyer acknowledges that Seller's payment obligation under this Section 11(c)

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 Seller in accordance with the MDA. Nothing in this Agreement shall be construed to require Seller to make any payments to Buyer, on a periodic and aggregate basis, in excess of Incremental Taxes actually received by Seller. Buyer acknowledges that the generation of Incremental Taxes is significantly dependent upon completion of the development of the Property and agrees that Seller is in no way responsible for the amount of Incremental Taxes actually generated. Buyer 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 Buyer the Affordable Housing Funds. Buyer therefore agrees to assume the entire risk that insufficient Incremental Taxes shall be generated for Seller to pay the Affordable Housing Funds to Buyer.

ii. Seller shall assist Buyer with securing additional affordable housing funds by evidencing in writing, within ten (10) days of the Effective Date, for distribution to third party financing sources, its intended commitment subject to approval and allocation.

iii. In pursuit of this condition, Buyer may order an appraisal of all or portions of the Property at its sole expense.

iv. Buyer shall deliver those affordable housing units as required under Buyer's obligation to Colorado Housing and Finance Authority ("CHFA").

v. Buyer agrees to meet the income-qualified unit requirements as further outlined in the County IGA within ten (10) years of Seller's escrow of the Affordable Housing Funds, pursuant to the Escrow Agreement, and if Buyer fails to do so it shall be an Event of Default of the MDA, as further set forth in the MDA, and Seller shall be able to exercise the Remedies set forth in the MDA.

(d) Water Sufficiency. Prior to Closing, Seller shall provide written confirmation ("Water Sufficiency Confirmation") from the South Adams County Water and Sanitation District ("SACWSD") that Seller has sufficient water rights acceptable to SACWSD to serve the number of residential units allowed by the PUD Permit and Master Subdivision Plat for the Property. Said water rights consist of Equivalent Residential Units ("ERUs") owned by Seller which are acceptable to SACWSD to provide water to the Property and which are recorded in Seller's accounts with SACWSD, and shall be made available to Buyer or occupants of the Property at no cost. Buyer, or subsequent owners of Property, shall be responsible for the payment of any fees to any responsible local agency to obtain water taps and for any cost of actual usage of water within the Property the Seller shall have no current or ongoing obligation to pay such costs, except to the extent Seller or the City owns and develops the Property. This Section 11(d) shall survive closing indefinitely.

(e) Bond Cap. Parties acknowledge that Buyer is utilizing private activity bonds capped for Buyer at thirty million dollars (\$30,000,000.00) to develop the Property. To the extent legally permissible, Seller and City agree to utilize commercially reasonable efforts to

allocate to Buyer, any excess private activity bond capacity as allocated from the State of Colorado in order to develop the Property.

(f) Public Improvement Agreement. Buyer acknowledges that City shall require Buyer to enter into the City's form Public Improvement Agreement at the time of subdivision plat for the Project. The Redeveloper may be allowed to use an applicable amount of Buyer's Escrow Funds to qualify as the surety under the Public Improvement Agreement so long as said applicable amount is restricted from withdrawal by the Redeveloper for the term described in the Public Improvement Agreement.

12. Representations and Warranties.

(a) Seller and the City. Seller and the City represent and warrant to Buyer, as of the Effective Date, which shall be true and correct in all material respects as of the date hereof and upon Closing, as a condition precedent to Buyer's obligation to close the transaction contemplated hereby, and the same shall survive each Closing Date to the extent hereafter provided:

i. To the best of Seller's actual knowledge, there are no existing or pending litigation, bankruptcy, receivership or similar proceedings, nor are there any claims, condemnations or sales in lieu thereof, Agreements of sale, options to purchase or rights of first refusal affecting the Property, or any part thereof, nor, to Seller's actual knowledge, have any such actions, suits, proceedings, condemnation claims or such matters been threatened or asserted in writing related to the Property.

ii. To the best of Seller's actual knowledge, Seller has received no written notice and, without investigation or inquiry, has no knowledge of any pending improvements, liens or special assessments to be made against the Property by any entity or governmental authority.

iii. Seller and the City have the full right, power and authority to execute this Agreement and carry out its obligations hereunder, without the joinder or consent of any other person or party, and the party or parties executing this Agreement on behalf of Seller and the City have been duly authorized and are empowered to bind Seller and the City to this Agreement, without the joinder or consent of any other person.

iv. Except as may be granted to, or approved in writing by Buyer or as may be disclosed in the Commitment or disclosed by Seller in writing prior to the Effective Date, to Seller's actual knowledge, there are no leases, arrangements, licenses, agreements, options, easements (other than customary utility easements), understandings, options, or rights of first offer or refusal affecting or relating to the Property in any way, including for the purchase, ownership, development, use, license or possession of the Property (or any portion thereof), except as described in this Agreement.

As used herein, the term "Seller's actual knowledge" shall mean the current actual knowledge of the City Director of Community Development without any investigation or inquiry and without regard to the knowledge of any former or other partners, employees, agents or

contractors of Seller. The individual named in the preceding sentence is acting for and on behalf of Seller and in a capacity as an employee of Seller and is in no manner expressly or impliedly making any representations or warranties in an individual capacity. Buyer waives any right to sue such named individual in his individual capacity or to seek any personal judgment or claim against such named individual. If any representation or warranty above is known by Buyer prior to Closing to be incorrect and is not remedied by Seller prior to Closing, Buyer may, as Buyer's sole and exclusive remedy, (i) terminate this Agreement by delivering written notice to Seller on or before the Closing specifying the specific representation that is incorrect along with supporting documentation in which event all Earnest Money shall be refunded to Buyer, or (ii) waive its objections and close the transaction.

The representations and warranties of Seller and the City contained in this Section shall survive the Closing for a period of six (6) months after which time they shall terminate and be of no further force or effect.

(a) Buyer. Buyer represents and warrants to Seller, as of the Effective Date, which shall be true and correct in all material respects as of the date hereof and on each Closing Date, as a condition precedent to Seller's obligation to close the transaction contemplated hereby, and the same shall survive each Closing Date to the extent hereafter provided:

i. Buyer (A) is a duly organized and validly existing corporation under the laws of the State of Colorado.

ii. Buyer has the full right, power and authority to execute this Agreement and carry out its obligations hereunder, without the joinder or consent of any other person or party, and the Manager executing this Agreement on behalf of Buyer have been duly authorized and are empowered to bind Buyer to this Agreement, without the joinder or consent of any other person.

iii. Buyer is not prohibited from entering into this Agreement or the transaction contemplated by this Agreement by any agreement to which it is a party.

iv. Buyer is not now nor shall it be at any time prior to the Closing an individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity (collectively, a "Person") with whom a United States citizen, entity organized under the laws of the United States or its territories or entity having its principal place of business within the United States or any of its territories (collectively, a "U.S. Person"), is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive order(s) or lists published by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") (including those executive orders and lists published by OFAC with respect to Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC ("Specially Designated Nationals and Blocked Persons")) or otherwise.

v. No Person who owns a direct interest in Buyer (collectively, a “Buyer Party”) is now nor shall be at any time prior to Closing a Person with whom a U.S. Person, is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by the OFAC (including those executive orders and lists published by OFAC with respect to Specially Designated Nationals and Blocked Persons) or otherwise.

vi. Buyer is in compliance with any and all applicable provisions of the USA Patriot Act of 2001, Pub. L. No. 107-56 et. seq.

vii. The obligation of Buyer to purchase the Property is not contingent upon Buyer’s ability to obtain financing of the Purchase Price.

viii. This Agreement constitutes the legal and valid obligation of Buyer and is binding on and enforceable against Buyer in accordance with its terms, except as such terms may be limited by (A) any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar law affecting creditors’ rights generally, or (B) general principles of equity, whether considered in a proceeding in equity or at law.

The representations and warranties of Buyer contained in this Section shall survive the Closing for a period of six (6) months after which time they shall terminate and be of no further force or effect.

13. **Deliverables at Closing.**

a. Seller. At Closing, Seller shall deliver to Buyer and, where appropriate, the Title Company, the following items:

i. The Deed conveying the Property to Buyer.

ii. A quit claim Bill of Sale conveying title to the personal property (if any).

iii. A certificate in such form as may be required by the Internal Revenue Service pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, or the regulations issued pursuant thereto, certifying as to the non-foreign status of Seller.

iv. To the extent transferable and assignable without any cost to Seller, an assignment to Buyer, in form and substance reasonably acceptable to Buyer, of Seller’s interest, in any and all licenses, certificates, permits and authorizations from any governmental authority of any kind relating to the Property, if any.

v. Evidence satisfactory to the Title Company that the persons executing and delivering the Closing documents on behalf of Seller have full right, power and authority to do so.

vi. A modified bills paid/parties in possession affidavit required by the Title Company executed by Seller to Seller's knowledge in favor of the Title Company, acknowledging ReGen's prior role and control of the Property.

vii. Such other documents as are reasonably necessary and appropriate in the consummation of this transaction and any other documents reasonably required by the Title Company.

viii. Seller's affidavit to the Title Company in a form sufficient and acceptable to the Title Company so as to allow it to eliminate the standard pre-printed exceptions from the Policy.

ix. The Water Sufficiency Confirmation.

b. Buyer. At Closing, Buyer shall deliver to Seller and, where appropriate, the Title Company, the following items:

i. The Purchase Price, payable in cash (or by cashier's check, wire transfer or other funds acceptable to the Title Company for immediate disbursement).

ii. One Taxpayer I.D. Certificate.

iii. A Colorado Real Property Transfer Declaration for all or separate portions of the Property, as necessary, completed with information approved by Seller in Seller's reasonable discretion.

iv. Evidence satisfactory to the Title Company that the persons executing and delivering the Closing documents on behalf of Buyer have full right, power and authority to do so.

v. A declaration of covenants, in form and substance reasonably acceptable to Seller, by Buyer as declarant imposing and implementing a payment in lieu of taxes on the Property for any uses which are exempt from property taxation under Colorado law, to be recorded immediately following the Deed at Closing.

vi. Such other documents as are reasonably necessary and appropriate in the consummation of this transaction and any other documents reasonably required by the Title Company.

14. **Title Policy; Closing Expenses**. At Closing, the Title Company shall commit to furnish Buyer with an ALTA Owner's Policy of Title Insurance with Owner's Extended Coverage ("Owner's Title Policy") issued by the Title Company, insuring Buyer as owner of the Property, in fee simple, and containing no exceptions to title other than the Permitted Exceptions and deleting the standard printed exceptions. Buyer shall pay the base premium for the Owner's Title Policy provided above and Buyer shall pay any additional charges or premiums charged by the Title Company for any endorsements or additional coverage requested by Buyer, transfer taxes,

documentary fee and the recording fee. Escrow fees shall be borne equally by Seller and Buyer. Seller and Buyer shall each pay their respective attorneys' fees associated with Closing.

15. **Possession of Property.** Buyer shall be entitled to full possession of the Property at Closing, subject only to the Permitted Exceptions.

16. **Prorations.** No later than five (5) days prior to Closing, Seller shall cause the Title Company to deliver current tax certificates of the Property. There are not currently property taxes on the Property as it is owned by Seller, a quasi-governmental entity. All taxes and assessments shall be prorated as of the date of Closing, using the best available computations, with Seller responsible for all taxes and assessments for periods up to each Closing and Buyer responsible for all taxes and assessments for periods from and after each Closing. If tax assessments for the Property for the current year are unavailable as of the Closing, said ad valorem taxes shall be prorated or adjusted based upon the tax bills for the immediately preceding tax year and increased or decreased based upon any known increase or decrease in the assessed valuation or the tax rate. Subsequent to Closing, when the tax rate and the assessed valuation of the Property is fixed for the year in which the Closing occurred, Seller and Buyer agree to adjust the proration of taxes and, if necessary, to refund or repay such sums as shall be necessary to effect such adjustment.

17. **Approvals and Cooperation.**

(a) **Zoning and Entitlements.** To the extent permissible by law, the City shall use municipally reasonable efforts to timely review any and all necessary permits, applications, land use designations, and acceleration of vertical construction prior to acceptance of trunk infrastructure. Once Buyer submits its Master Subdivision Plat application, Buyer shall use commercially reasonable efforts to respond to and address City comments in order to obtain the Master Subdivision Plat from the City in a timely fashion and City shall use municipally reasonable efforts as allowable by law to review and make a final determination regarding the Master Subdivision Plat.

(b) **Design Guidelines.** Buyer shall prepare, submit and cooperate with the City to obtain final approval for design guidelines for the development of the Property (“Design Guidelines”) no later than the end of the Due Diligence Period. To the extent permissible by law, the City will use reasonable efforts to timely review and make a final determination regarding the Design Guidelines no later than the end of the Due Diligence Period.

(c) **Affordable Housing Funding.** To the extent legally permissible, Seller shall support new market tax credit project and the application by Buyer for LIHTC affordable apartment developments, as defined by CHFA for affordability, to preclude the development of LIHTC product by any entity not affiliated with Buyer within a three (3) mile circumference of the Property until such time as construction and absorption of the affordable apartment development at the Property or this Agreement is terminated.

(d) **Amended Redevelopment Agreement.** To the extent the Escrow Agreement and the MDA need to be amended to accommodate the terms of amendments to this Agreement

from time to time, Parties shall work together in good faith to seek any necessary approvals of said amendments in a timely manner.

(e) Applications. The Parties acknowledge that prior to Closing, Buyer and/or Buyer's agents or employees, may submit Property use applications involving the Property to City, County, and/or State governmental bodies or political subdivisions. Furthermore, prior to Closing, Buyer and/or Buyer's agents or employees may make such investigations and inquiries as Buyer deems necessary to satisfy itself as to the condition of the Property, which may include direct contact with representatives of the City, the State of Colorado and each of their respective agencies, any taxing entity within the urban renewal area, other governmental bodies or political subdivisions, consultants, engineers, employees, and principals concerning any governmental Property regulations, subdivision and planning ordinances, zoning ordinances, architectural and design approvals affecting or required for the project contemplated by Buyer, estimated on and off-site development costs and public improvement requirements, financial and market feasibility, the status of the entitlements on or affecting the Property, the amount and terms and any bonds, assessments, infrastructure fees, school fees, park fees, and special taxes, fees, districts, reimbursements and/or improvement obligations which may affect the subject real property, the availability and adequacy of utility services and allocations, residential development allocations and similar allocations, and all other aspects of the physical, economic and legal condition of the Property and its development condition and regulatory status, provided, however, that in light of Seller's actual ownership of the Property in the interim, Buyer shall have no right to enter into any agreements, understandings, letters of intent, or other obligations that would bind the Property without Seller's participation and/or approval of such matters. In connection with Buyer's investigation, inquiries and submittals, Seller shall reasonably cooperate with Buyer.

(f) Easements. To the extent necessary to enable Buyer to develop the Property, Seller shall grant to Buyer, in reasonable locations, any necessary drainage, utility, right-of-way or other necessary easements on, over, under, and/or through Blocks 1 and 2 of the Mile High Greyhound Park owned by Seller.

(g) Fill. To the extent there is excess soil available from the excavation of the Regional Storm Water Facility, Buyer may utilize it at the Property, at Buyer's sole cost and expense.

Unless otherwise provided, Section 17 of this Agreement shall survive Closing for a period of five (5) years.

18. **Brokerage Commission**. Each Party represents that no broker has been involved with this Agreement and the transactions contemplated herein. In the event of any claim for broker's or finder's fees or commissions in connection with the negotiation, execution or consummation of this Agreement or the transactions contemplated hereby, each Party shall defend, indemnify and hold harmless the other Party from and against any such claim based upon any statement, representation or agreement of such Party. The indemnities set forth in this Section shall survive the Closing.

19. **Regional Storm Water Facility.** The Parties acknowledge that the existing regional storm water detention facility is undersized for its current and future use and is used nearly exclusively for storm water detention of flows generated in other areas of the City. As part of the overall development of the Property and separate and apart from any other financial commitment contained herein, including but not limited to Preliminary Engineering Fees, City agrees that it shall pay Buyer for performing the improvement of a new regional storm water facility (“Regional Storm Water Facility”) pursuant to the terms of the Escrow Agreement. The improvement cost for the Regional Storm Water Facility shall include all design, engineering, studies, maps, surveying, construction management, materials, labor, consultants and all other costs associated with the design and reconstruction of the facility including but not limited to the City’s pro-rata share of the engineering and design related costs attributable to the Regional Storm Water Facility, landscaping on the edges of the Regional Storm Water Facility and immediately adjacent street improvements on Holly Street and 64th Avenue. Parties agree that the current estimated cost for the Regional Storm Water Facility as contemplated in Exhibit C to the MDA, is Two Million Five Hundred Thousand Dollars (\$2,500,000.00). Buyer and Seller agree to work cooperatively to complete the design, develop the budget, and reconstruct the Regional Storm Water Facility so that it will safely accommodate current and projected future storm water flows within its boundaries without subjecting land within the Property to flooding. Prior to Closing and Buyer submittal of the Master Subdivision Plat application, the Parties shall agree upon a final design of the Regional Storm Water Facility to create space on the edges of the facility to allow safe pedestrian access in a landscaped environment promoting passive enjoyment of the Regional Storm Water Facility and open space which the parties agree may exceed the estimated cost. The parties agree to work cooperatively so that the construction of the Regional Storm Water Facility occurs prior to the development of any construction that would cause storm water to flow to the Regional Storm Water Facility, or such other time as is mutually agreeable to the parties. Subject to the approval and allocation of the Regional Storm Water Facility funds, the City shall deposit said funds into escrow at or before Closing pursuant to the Escrow Agreement. If the Regional Storm Water Facility has been completed but there are remaining City’s Escrow Funds (“City’s Escrow Funds Underage”), pursuant to the Escrow Agreement, City’s Escrow Funds Underage shall be applied first to the Redeveloper’s Reimbursement (as defined in the MDA), then to the Improvements if Buyer’s Escrow Funds have been fully disbursed, then to either completion of infrastructure improvements to the Commercial Block or infrastructure improvements to the Education Block. The Regional Storm Water Facility will be dedicated to the City as part of the Master Subdivision Plat.

20. **Default.**

(a) **Default by Buyer.** If Buyer shall default in the performance of any of the terms and conditions of this Agreement or if the Closing shall not occur through the sole fault of Buyer, Seller may, as Seller’s sole remedy, rescind this Agreement and receive as liquidated damages the expenditure of the Preliminary Engineering Fees as Earnest Money, whereupon this Agreement shall terminate and the Parties shall have no further rights or obligations hereunder, except for those that expressly survive termination. The Parties acknowledge and agree that (a) it would be extremely difficult to accurately determine the amount of damages suffered by Seller as a result of Buyer’s default hereunder; (b) the Earnest Money constitutes a fair and reasonable amount as agreed and liquidated damages for Buyer’s default under this Agreement, as well as a fair, reasonable, and customary amount to be paid as liquidated damages to a seller in an arm’s

length transaction of the type contemplated by this Agreement upon a default by the Buyer thereunder; and (c) expenditure of the Earnest Money towards Preliminary Engineering Fees upon Buyer's default hereunder shall not constitute a penalty or a forfeiture. In no event shall Buyer be liable to Seller or City for any punitive, speculative or consequential damages. Buyer's failure to observe or perform any material covenant, obligation or agreement as provided herein shall constitute default under this Agreement.

(b) Default by Seller. Seller's failure to observe or perform any material covenant, obligation or agreement as provided herein shall constitute default under this Agreement. If Seller shall default in the performance of any of the terms and conditions of this Agreement or if the Closing shall not occur through the sole fault of Seller, Buyer may, at Buyer's option, elect any or all of the following: (a) rescind this Agreement and receive a return of the Earnest Money, whereupon this Agreement shall terminate and the Parties shall have no further rights or obligations hereunder, except for those that expressly survive termination, (b) proceed with this Agreement and exercise its rights under the Escrow Agreement, or (c) seek enforcement of Seller's obligations under this Agreement. In no event shall Seller be liable to Buyer for any punitive, speculative or consequential damages.

(c) Notice of Default. In the event any Party is in default of any provision hereof, the non-defaulting Party, as a condition precedent to such Party's remedies, must give the defaulting Party written notice of the default. The defaulting Party shall have ten (10) business days from the receipt of such notice to cure the default. If the default is timely cured, this Agreement shall continue in full force and effect. If the default is not timely cured, the non-defaulting Party may pursue such Party's applicable remedies set forth in this Agreement.

21. Assignment of Agreement. Buyer may assign this Agreement to an Affiliate without Seller's prior written consent by written notice to Seller not less than ten (10) business days prior to Closing. Any other assignment shall require the prior written consent of Seller, which consent may be withheld in Seller's sole discretion, and any assignment made without such consent shall be void and vest no rights in the purported assignee. "Affiliate" means an entity directly or indirectly controlling, controlled by, or under common control with Buyer or Buyer's principals. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the entity, whether through ownership of voting securities or partnership interests, by Agreement, or otherwise. No assignment of Buyer's rights hereunder shall relieve Buyer of its liabilities under this Agreement.

22. Condemnation. In the event that any material portion of the Property is taken in condemnation or under the right of eminent domain, or by conveyance in lieu of condemnation, after the date of this Agreement and before the Closing Date, Buyer may, at its option, either: (i) terminate this Agreement and receive an immediate refund of all Earnest Money, and in the case the City initiates the condemnation or right under eminent domain, the City shall pay Buyer for all reasonable development costs accrued to date in connection with development of the Property; or (ii) proceed to close the transaction contemplated herein pursuant to the terms hereof, in which event Seller shall deliver to Buyer at Closing any proceeds actually received by Seller attributable to the Property from such condemnation or eminent domain proceeding or conveyance in lieu thereof, or assign to Buyer Seller's rights to such proceeds and there shall be no reduction in the Purchase Price.

23. **Risk of Loss.** Seller shall promptly notify Buyer of any material casualty to the Property or any condemnation proceeding commenced prior to the Closing. In the event that after the Effective Date and prior to Closing, a casualty occurs affecting 10% or more of the Property, then Buyer shall have the option of (a) terminating this Agreement, in which event the Earnest Money shall be paid by Seller to Buyer and this Agreement shall be terminated with no Party having any rights against another, or (b) completing the purchase, in which event, Buyer shall be entitled to and shall be assigned any compensation, awards, or other payments or relief resulting from such casualty, minus any insurance deductible.

24. **Notices.** Any notice, request, demand or other communication to be given to a Party hereunder, except those required to be delivered at Closing, shall be in writing and sent by (i) U.S. registered or certified mail, postage prepaid, return receipt requested (ii) overnight delivery service providing proof of receipt, or (iii) electronically to the addresses as set out as follows, or such other notice address as a Party may hereafter provide to the other:

TO SELLER:

Urban Renewal Authority of the City of
Commerce City
Attn: Executive Director
7887 E. 60th Ave.
Commerce City, CO 80022
Telephone: (303) 289-3678
Email: ccramer@c3gov.com

WITH A COPY TO:

City Attorney
7887 E. 60th Ave.
Commerce City, CO 80022
Telephone: (303) 289-3604
Email: rsheesley@c3gov.com

WITH A COPY TO:

Brownstein Hyatt Farber Schreck
410 17th Street, Suite 2200
Denver, CO 80202
Attn: Caitlin Quander
Telephone: (303) 223-1233
Email: cquander@bhfs.com

TO BUYER:

Delwest Capital, LLC
Attn: Joe DelZotto
155 S. Madison Street
Denver, CO 80209
Telephone: (720) 708-4065
Email: jad@delwest.com

WITH A COPY TO:

Fairfield and Woods, PC
1801 California Street, Suite 2600
Denver, CO 80202
Attn: Rita Connerly
Telephone: (303) 894-4411
Email: rconnerly@fwlaw.com

TO CITY:

City of Commerce City
Attn: City Manager
7887 E. 60th Ave.
Commerce City, CO 80022
Telephone: (303) 227-8814
Email: bmcbbroom@c3gov.com

WITH COPY TO:

City of Commerce City
Attn: Robert Sheesley
7887 E. 60th Ave.
Commerce City, CO 80022
Telephone: (303) 289-3604
Email: rsheesley@c3gov.com

Notices shall be deemed given upon receipt or upon refusal to accept delivery.

25. **Miscellaneous.**

(a) **Construction of Number and Gender.** Words of any gender used herein shall be deemed to include the masculine, feminine and neuter, and words used in the singular shall include the plural and vice versa, all as the context hereof may reasonably require.

(a) **Forms.** In case of a dispute as to the form of any document required hereunder or otherwise contemplated hereby, the Parties agree to act reasonably.

(b) Attorneys' Fees. If a Party shall be required to employ an attorney to enforce or defend the rights of such Party arising under this Agreement, the prevailing Party shall be entitled to cover reasonable attorneys' fees and cost of suit.

(c) Integration. This Agreement contains the complete agreement between the Parties with respect to the subject matter hereof and cannot be varied except by the written agreement of the Parties. The Parties agree that there are no oral agreements, understandings, representations or warranties which are not expressly set forth herein.

(d) Business Day. If any date herein set forth for the performance or any obligations by Seller or Buyer or for the delivery of any item, instrument or notice as herein provided should be on a Saturday, Sunday, or legal holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday, or legal holiday. As used herein, the term "legal holiday" means any federal or state holiday for which financial institutions or post offices are generally closed in the State of Colorado.

(e) Multiple Counterparts. This Agreement may be executed in one or more counterparts, and all so executed shall constitute one (1) and the same agreement, binding upon the Parties hereto, and notwithstanding that all of the Parties are not signatories to the same counterparts.

(f) Time of the Essence. Time is of the essence of this Agreement and every provision hereof.

(g) Choice of Law, Waiver of Jury Trial and Certain Damages. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE UNITED STATES OF AMERICA AND THE INTERNAL LAWS OF THE STATE OF COLORADO, WITHOUT REGARD TO ITS CONFLICT RULES. THE EXCLUSIVE VENUE FOR ANY LITIGATION OR DISPUTE ARISING UNDER THE TERMS OF THIS AGREEMENT SHALL BE ADAMS COUNTY DISTRICT COURT IN THE STATE OF COLORADO WHERE THE PARTIES HERETO EXPRESSLY SUBMIT TO THE JURISDICTION OF ALL FEDERAL AND APPLICABLE STATE COURTS LOCATED IN THE STATE OF COLORADO AND CONSENT THAT THEY MAY BE SERVED WITH ANY PROCESS OR PAPER WITHIN OR WITHOUT THE STATE OF COLORADO IN ACCORDANCE WITH APPLICABLE LAW. THE PARTIES HERETO SHALL AND THEY HEREBY DO INTENTIONALLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER UNDER THE TERMS OF THIS AGREEMENT. THE PARTIES FURTHER WAIVE THE RIGHT TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT WITH RESPECT TO THE TERMS OF THIS AGREEMENT.

(h) Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable

provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal invalid or unenforceable provision there shall be added automatically as a part of this Agreement, a provision as similar in terms to such illegal invalid or unenforceable provision as may be possible and be legal valid and enforceable.

(i) Negotiation by Counsel. The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement, and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

(j) Authority of Signatory. Each of the Seller signatories hereto individually represents and warrants that he or she has full right and authority to execute this Agreement on behalf of the Party named herein and that this Agreement is a valid and binding obligation of such Party, subject to its terms.

(k) Seller's and Buyer's Representatives. The individuals executing this Agreement on behalf of Seller and Buyer are doing so in their respective representative capacities only, solely as representatives of Seller or Buyer, and any liability resulting hereunder based upon the actions of such individual shall merely be that of Seller or Buyer and not such individual. The individuals are acting for and on behalf of Seller and Buyer in a capacity as an employee of Seller or Buyer and are in no manner expressly or impliedly making any representations or warranties in an individual capacity. Buyer and Buyer respectively waive any right to sue such named individuals in their individual capacity or to seek any personal judgment or claim against such named individuals.

(l) Binding Effect. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, legal representatives, successors and assigns, wherever the context so requires or permits.

(m) Heading. The article headings contained herein are for purposes of identification only and shall not be considered in construing this Agreement.

26. **Special District.** The boundaries of any special districts overlying or special districts that control, through intergovernmental agreement, districts which overly the Property shall not be formed without approval of the Buyer and to the extent special districts currently exist, the Seller shall provide rights to property within all such districts so as to qualify Buyer and its designees as an elector and potential board member of such special districts.

27. **No Waiver of Immunity.** Nothing contained in this Agreement constitutes a waiver of sovereign immunity or governmental immunity by any Party under applicable state law.

28. **Colorado Disclosures.**

(a) Interstate Land Sales Full Disclosure Act and Colorado Subdivision Developers Act Exemptions. It is acknowledged and agreed by the Parties that the sale of the

Property shall be exempt from the provisions of the federal Interstate Land Sales Full Disclosure Act under the exemption applicable to sale or lease of property to any person who acquires such property for the purpose of engaging in the business of constructing residential, commercial or industrial buildings or for the purpose of resale of such property to persons engaged in such business. Buyer hereby represents and warrants to Seller that it is acquiring the Property for such purposes. It is further acknowledged by the Parties that the sale of the Property shall be exempt under the provisions of the Colorado Subdivision Developers Act under the exemption applicable to transfers between developers. Buyer represents and warrants to Seller that Buyer is acquiring the Property for the purpose of participating as the owner of the Property in the development, promotion and sale of the Property and portions thereof. The provisions in this subsection (a) shall survive Closing.

(b) Special Taxing District Disclosure. In accordance with the provisions of C.R.S. § 38-35.7-101(1), Seller provides the following disclosure to Buyer:

SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.

(c) Common Interest Community Disclosure. In accordance with the provisions of C.R.S. § 38-35.7-102(1), Seller provides the following disclosure to Buyer:

THE PROPERTY IS, OR SHALL BE PRIOR TO CLOSING, LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS, OR SHALL BE PRIOR TO CLOSING, SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER OF THE PROPERTY SHALL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE COMMUNITY AND SHALL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS SHALL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. BUYERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION.

BUYERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.

(d) Source of Water Disclosure. In accordance with the provisions of C.R.S. § 38-35.7-104, Seller provides the following disclosure to Buyer:

THE SOURCE OF POTABLE WATER FOR THIS REAL ESTATE IS:

☐ A WELL;

☒ A WATER PROVIDER, WHICH CAN BE CONTACTED AS FOLLOWS:

NAME: South Adams County Water and Sanitation District

ADDRESS: 6595 E. 70th Ave., Commerce City, CO 80037

WEB SITE: <http://www.sacwsd.org/>

TELEPHONE: 303.288.2646

☐ NEITHER A WELL NOR A WATER PROVIDER. THE SOURCE IS [DESCRIBE]:

SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.

(e) Severed Mineral Rights Disclosure. In accordance with the provisions of C.R.S. §38-35.7-108, Seller provides the following disclosure to Purchaser:

THE SURFACE ESTATE OF THE PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE, AND TRANSFER OF THE SURFACE ESTATE MAY NOT INCLUDE TRANSFER OF THE MINERAL ESTATE. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL, GAS, OR OTHER MINERALS UNDER THE SURFACE, AND THEY MAY ENTER AND USE THE SURFACE ESTATE TO ACCESS THE MINERAL ESTATE. THE USE OF THE SURFACE ESTATE TO ACCESS THE MINERALS MAY BE GOVERNED BY A SURFACE USE AGREEMENT, A MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE COUNTY CLERK AND RECORDER. THE OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR ADJACENT TO THIS PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING, WELL COMPLETION OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES, PRODUCING WELLS, REWORKING OF CURRENT WELLS, AND GAS GATHERING AND PROCESSING FACILITIES. THE BUYER IS ENCOURAGED TO SEEK ADDITIONAL INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THIS PROPERTY, INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE COLORADO OIL AND GAS CONSERVATION COMMISSION.

(f) Radon. Buyer acknowledges that Seller neither claims nor possesses any special expertise in the measurement or reduction of radon. Buyer further acknowledges that Seller has not undertaken any evaluation of the presence or risks of radon with respect to the Property nor has it made any representation or given any other advice to Buyer as to acceptable levels or possible health hazards of radon. SELLER HAS MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PRESENCE OR ABSENCE OF RADON OR OTHER ENVIRONMENTAL POLLUTANTS WITHIN THE PROPERTY OR THE IMPROVEMENTS TO BE CONSTRUCTED ON THE PROPERTY OR

THE SOILS BENEATH OR ADJACENT TO THE PROPERTY OR THE IMPROVEMENTS TO BE CONSTRUCTED ON THE PROPERTY AFTER THE CLOSING DATE. Buyer, on behalf of itself and its successors and assigns, hereby releases Seller from any and all liability and claims with respect to radon gas. The provisions in this subsection (f) shall survive Closing.

(g) Expansive Soils. Buyer acknowledges that soils within the State of Colorado consist of both expansive soils and low-density soils, which may adversely affect the integrity of improvements constructed on the Property if the improvements and the Property on which it is constructed are not properly maintained. Expansive soils contain clay mineral, which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils. The addition of moisture to low-density soils causes a realignment of soil grains, thereby resulting in consolidation and/or collapse of the soils. Buyer shall ensure that the buildings and improvements to be constructed upon the Property shall be completed in accordance with proper design and construction techniques. SELLER HAS MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PRESENCE OR ABSENCE OF EXPANSIVE SOILS AND LOW-DENSITY SOILS UPON THE PROPERTY AND BUYER SHALL UNDERTAKE SUCH INVESTIGATION AS SHALL BE REASONABLE AND PRUDENT TO DETERMINE THE EXISTENCE OF THE SAME. Buyer, on behalf of itself and its successors and assigns, hereby releases Seller from any and all liability and claims with respect to any expansive or low-density soils located within the Property. The provisions in this subsection (g) shall survive Closing.

29. Delegation of Authority. Unless this Agreement specifically delegates a review, approval or decision by the Executive Director of the Seller, all such reviews, approvals and decisions shall be performed by the Board of Seller or City Council.

30. Annual Appropriation. The City's commitments within this Agreement are subject to annual appropriation, as required by Article X, § 20 of the Colorado Constitution, provided that such commitments shall be determined before Closing. The City and Seller commitments in this Agreement are subject to approval of required public actions by the respective elected and appointed bodies which actions shall be taken before Closing.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed the foregoing Agreement as of the Effective Date.

SELLER:

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

By: _____
Name: _____
Its: _____
Date: _____

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed the foregoing Agreement as of the Effective Date.

CITY:

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

By: _____

Name: _____

Its: _____

Date: _____

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed the foregoing Agreement as of the Effective Date.

BUYER:

Greyhound Park LLC, a limited liability company

By: _____

Name: _____

Its: _____

Date: _____

ACCEPTANCE BY TITLE COMPANY

Land Title Guarantee Company referred to in this Agreement as the “Title Company,” hereby acknowledges the fully executed counterpart(s) of this Agreement. The Title Company certifies that it has received and understands the Agreement and hereby accepts the obligations of the Title Company as set forth herein.

TITLE COMPANY:

Land Title Guarantee Company

By: _____

Name: _____

Its: _____

Date: _____

EXHIBIT A
PROPERTY LEGAL DESCRIPTION

TO BE CREATED LEGAL DESCRIPTION FOR BLOCKS 3-13:

A PORTION OF, RESUBDIVISION OF TOWN AND COUNTRY SUBDIVISION ADAMS COUNTY FILE 9 MAP 43 RECEPTION NO. 342483 RECORDED MARCH 30, 1949. LOCATED IN THE NORTHEAST 1/4 OF SECTION 7 TOWNSHIP 3 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN CITY OF COMMERCE CITY, COUNTY OF ADAMS, STATE OF COLORADO.

A PORTION OF PARCEL D, EXCLUDING BOYS AND GIRLS CLUBS OF METRO DENVER SUBDIVISION FILING NO. 1 REPLAT RECEPTION NO. 2016000008888 AND RIGHT OF WAY BOOK 3953 PAGE 404-405.

TOWN AND COUNTRY SUBDIVISION RESUBD TRACT D, DESCRIBED AS THE NORTH 825 FEET OF EAST 121 FT OF BLOCK D

TOWN AND COUNTRY SUBDIVISION RESUBDIVISION BLOCK:1, LOTS 14 EXCLUDING RIGHT OF WAY RECEPTION NO 2011000050034 AND 15 THRU 24. TOGETHER WITH THE DAHLIA STREET PLATTED AS EUDORA STREET RIGHT OF WAY ADJACENT TO BLOCK 1 ON THE WEST.

LESS AND EXCEPT TO BE CREATED BLOCKS 1 AND 2.

EXHIBIT B
FORM OF ESCROW AGREEMENT

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Escrow Agreement") is made and entered into _____, 20____ ("Effective Date"), by and between LAND TITLE GUARANTEE COMPANY, a _____ ("Escrow Agent"), 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"). Escrow Agent or Seller or Buyer or City may be referred to individually as "Party" or collectively as "Parties."

RECITALS

A. WHEREAS, Buyer, Seller, and City entered into that certain Purchase and Sale Agreement effective _____ ("PSA"), pertaining to Buyer's purchase of the Property; and

B. WHEREAS, Buyer and Seller entered into that certain Amended and Restated Phased Redevelopment Agreement effective _____ ("MDA"), pertaining to Buyer's development of the Property; and

C. WHEREAS, Pursuant to the terms of the PSA, Buyer, Seller, and City shall escrow certain amounts for the development of infrastructure, intergovernmental agreement obligations and affordable housing on the Property upon conditions and requirements set forth in the PSA and MDA; and

D. WHEREAS, the parties desire to enter into this Escrow Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals, which are incorporated herein, and the promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Capitalized Terms. Capitalized terms used but not defined in this Escrow Agreement shall have the meanings given them in the PSA unless otherwise specified. In the event of any conflict between the terms and provisions of this Escrow Agreement and the terms and provisions of the PSA, the terms and provisions of this Escrow Agreement shall supersede and control.

2. Appointment of Escrow Agent. SUBJECT TO TITLE COMPANY INPUT AND FORM: The Parties hereby appoint Escrow Agent as their agent and custodian to hold, invest and disburse the escrow funds as defined herein (the Buyer's Escrow Funds, Seller's Escrow Funds, and City's Escrow Funds together collectively known as "All Escrow Funds") in accordance with the terms of this Escrow Agreement.

3. Buyer's Escrow Funds.

(a) No later than Closing, Buyer shall deliver into escrow in immediately available funds the Purchase Price (Nine Million Five Hundred Thousand Dollars (\$9,500,000.00)) less the Preliminary Engineering Fees (up to Three Hundred Thousand Dollars (\$300,000.00)) (net amount hereafter referred to as "Buyer's Escrow Funds").

(b) At Closing, Buyer's Escrow Funds shall become immediately available to Buyer for reimbursement of expenses related to the Improvements as part of the development of the Property and incurred prior to and following Closing, expressly excluding Preliminary Engineering Fees, and pursuant to the following process. Subject to the MDA and upon Buyer's presentation of reasonably sufficient written invoices or receipts to Seller for Improvements pursuant to Exhibit C of the MDA (Improvements Scope of Work Description and Depiction) and Seller having the right to inspect the Improvements, Seller shall instruct Escrow Agent to disburse Buyer's Escrow Funds in an equivalent amount. Seller's disbursement instruction to Escrow Agent shall not be unreasonably withheld.

(c) Buyer shall be obligated to enter into the City's form Public Improvement Agreement at the time of subdivision plat. Buyer may be allowed to use an applicable amount of Buyer's Escrow Funds to qualify as a portion of the surety under the Public Improvement Agreement so long as said applicable amount is restricted from withdrawal by Escrow Agent for the term described in the Public Improvement Agreement, and subject to additional conditions on inspection pursuant to the City's public improvement requirements and City's applicable construction standards, disbursal, and replenishment to ensure the adequacy of available surety funds.

(d) In accordance with the terms of the Intergovernmental Agreement with the Adams 14 School District, Buyer shall pay the Adams 14 School District the estimated cost to construct two modular units with two classes and a bathroom within each modular unit (which shall not exceed \$330,000.00), and the Adams 14 School District shall then use the funds to install two modular units at the Central Elementary school site ("Adams 14 Payment"). Subject to the MDA and upon Buyer's presentation of reasonably sufficient documentation to Seller for the Adams 14 Payment pursuant to Exhibit C of the MDA (Improvements Scope of Work Description and Depiction), Seller shall instruct Escrow Agent to disburse Buyer's Escrow Funds in an equivalent amount. Seller's disbursement instruction to Escrow Agent shall not be unreasonably withheld. Escrow Agent shall not allow disbursement of Buyer's Escrow Funds to reduce Buyer's Escrow Funds below Three Hundred and Thirty Thousand Dollars (\$330,000.00) until the Adams 14 Payment is made.

(e) If the Improvements (as defined in the MDA) have been completed but there are remaining Buyer's Escrow Funds ("Buyer's Escrow Funds Underage"), Buyer's Escrow Funds Underage shall be applied first to the Redeveloper's Reimbursement (as defined in the MDA), then to the Regional Storm Water Facility, then to either completion of infrastructure improvements to the Commercial Block or infrastructure improvements to the Education Block. Subject to the MDA and upon Buyer's presentation of reasonably sufficient written invoices or receipts to Seller for expenses associated with the improvements listed in the foregoing sentence and Seller having the right to inspect said improvements, Seller shall instruct Escrow Agent to disburse Buyer's Escrow Funds Underage in an equivalent amount. Seller's disbursement instruction to Escrow Agent shall not be unreasonably withheld.

4. Seller's Escrow Funds.

(a) No later than Closing, Seller shall deliver into escrow, in immediately available funds, the Affordable Housing Funds, pursuant to the terms of the PSA, in the amount of Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000.00) ("Seller's Escrow Funds").

(b) Upon Closing, Seller's Escrow Funds shall become immediately available to Buyer for expenses related to the construction of the affordable housing units as part of the development of the Property, and pursuant to the following process. Subject to the PSA and upon Buyer's presentation of reasonably sufficient written invoices or receipts to Seller and Seller having the right to inspect, Seller shall instruct Escrow Agent to disburse Seller's Escrow Funds in an equivalent amount. Seller's disbursement instruction to Escrow Agent shall not be unreasonably withheld.

5. City's Escrow Funds.

(a) No later than Closing, the City shall deliver into escrow, in immediately available funds, funds for the design and construction of the Regional Storm Water Facility pursuant to the terms of the PSA, estimated at Two Million Five Hundred Thousand Dollars (\$2,500,000.00) ("City's Escrow Funds").

(b) Upon Closing, the City's Escrow Funds shall become immediately available to Buyer for reimbursement of expenses related to the Regional Storm Water Facility as part of the development of the Property, and pursuant to the following process. Subject to the PSA and MDA and upon Buyer's presentation of reasonably sufficient written invoices or receipts to Seller for the Regional Storm Water Facility pursuant to Exhibit C of the MDA (Improvements Scope of Work Description and Depiction) and Seller having the right to inspect the Improvements, Seller shall instruct Escrow Agent to disburse Buyer's Escrow Funds in an equivalent amount. Seller's disbursement instruction to Escrow Agent shall not be unreasonably withheld.

(c) If the Regional Storm Water Facility has been completed but there are remaining City's Escrow Funds ("City's Escrow Funds Underage"), City's Escrow Funds Underage shall be applied first to the Redeveloper's Reimbursement (as defined in the MDA), then to the Improvements, then to either completion of infrastructure improvements to the

Commercial Block or infrastructure improvements to the Education Block. Subject to the MDA and upon Buyer's presentation of reasonably sufficient written invoices or receipts to Seller for expenses associated with the improvements listed in the foregoing sentence and Seller having the right to inspect said improvements, Seller shall instruct Escrow Agent to disburse City's Escrow Funds Underage in an equivalent amount. Seller's disbursement instruction to Escrow Agent shall not be unreasonably withheld.

6. **Requests for Disbursement for All Escrow Funds.** Buyer shall provide reasonably sufficient written invoices or receipts and a description of the requested disbursement amount to Seller (each, a "Draw Request"), as further described in Sections 3, 4, and 5 above in order for Seller to instruct Escrow Agent to disburse. Buyer shall provide the Draw Request either pursuant to the notice process below in Section 12 or electronically to Seller or electronically to any party that Seller designates to review. Any complete request by Buyer to Seller for Draw Request shall be approved or denied by Seller within ten (10) days or shall be deemed approved. Seller shall communicate its instructions for disbursement to Escrow Agent electronically or verbally. **LAND TITLE TO PROVIDE ADDITIONAL LANGUAGE.**

7. **Investment of All Escrow Funds.** Escrow Agent shall hold and maintain all cash funds comprising All Escrow Funds in an interest bearing money market account, or other investment vehicles as determined by Buyer ("Escrow Account") and approved by Seller. Earnings from All Escrow Funds shall be proportionately applied to each respective escrow account, and disbursed subject to the terms herein.

8. **Escrowed Deeds.** At Closing, Buyer shall execute and place into escrow signed and notarized Deeds for each Block (as defined in the PSA) conveying each respective Block back to Seller. Upon Seller's payment to Buyer of Buyer's pro rata share of monies expended and disbursed for the Improvements based on the acreage of the applicable portion of the Property being repurchased in relation to the total acreage of the Property, Seller may exercise its right to repurchase a respective Block and direct Escrow Agent to release the applicable Deed for recording only if a 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. The Deeds containing Seller's rights to repurchase shall expressly expire (1) upon completion of the Improvements on each respective Block, and (2) if Seller has not consented to the sale of any particular Block by Buyer to a non-affiliated entity pursuant to the terms of the MDA, prior to the date vertical development has occurred on each respective Block.

9. **Termination of Escrow Agreement.**

(a) If the MDA is terminated by Seller for a Buyer Event of Default (as defined in the MDA), Seller shall provide written notice to the Escrow Agent, Buyer and the City. Escrow Agent shall then disburse any remaining Buyer's Escrow Funds to Seller, Seller's Escrow Funds to Seller and the City's Escrow Funds to the City in order for Seller and the City to complete the Improvements and the Regional Storm Water Facility.

(b) This Escrow Agreement may be terminated upon mutual agreement of Buyer, Seller and the City provided that written notice thereof is provided to Escrow Agent.

Such notice shall specify the Joint Instructions for distribution of and remaining portion of All Escrow Funds.

(c) This Escrow Agreement shall automatically terminate without any further action or notice by Escrow Agent or any other Party upon the disbursement of the entire balance of All Escrow Funds pursuant to the Escrow Agreement, the PSA and the MDA.

10. Duties of Escrow Agent. Escrow Agent hereby accepts its obligations under this Escrow Agreement, and represents that it has the legal power and authority to enter into this Escrow Agreement and perform its obligations hereunder. Escrow Agent further agrees that All Escrow Funds held by Escrow Agent hereunder shall be segregated from all other property held by Escrow Agent and shall be identified as being held in connection with this Escrow Agreement. Segregation may be accomplished by appropriate identification on the books and records of Escrow Agent. Escrow Agent agrees that its documents and records with respect to the transactions contemplated hereby shall be available for examination by Buyer, Seller, and the City upon written notice and during Escrow Agent's normal business hours. **LAND TITLE TO PROVIDE THIS LANGUAGE.**

11. Compensation of Escrow Agent. Escrow Agent shall be reimbursed for reasonable expenses, disbursements and advances incurred or made by Escrow Agent in performance of its duties hereunder in proportionate shares from All Escrow Funds.

12. Notices. Any notice, request, demand or other communication to be given to a Party hereunder, except those required to be delivered at Closing, shall be in writing and sent by (i) U.S. registered or certified mail, postage prepaid, return receipt requested, or (ii) overnight delivery service providing proof of receipt, or such other notice address as a Party may hereafter provide to the other:

TO SELLER:

Urban Renewal Authority of the City of
Commerce City
Attn: Executive Director
7887 E. 60th Ave.
Commerce City, CO 80022
Telephone: (303) 289-3678

WITH A COPY TO:

City Attorney
7887 E. 60th Ave.
Commerce City, CO 80022
Telephone: (303) 289-3604

WITH A COPY TO:

Brownstein Hyatt Farber Schreck
410 17th Street, Suite 2200
Denver, CO 80202
Attn: Caitlin Quander
Telephone: (303) 223-1233

TO BUYER:

WITH A COPY TO:

Delwest Capital, LLC
Attn: Joe DelZotto
155 S. Madison Street
Denver, CO 80209
Telephone: (720) 708-4065

Fairfield and Woods, PC
1801 California Street, Suite 2600
Denver, CO 80202
Attn: Rita Connerly
Telephone: (303) 894-4411

TO CITY:

City of Commerce City
Attn: City Manager
7887 E. 60th Ave.
Commerce City, CO 80022
Telephone: (303) 227-8814

WITH A COPY TO:

City of Commerce City
Attn: City Attorney
6887 E. 60th Ave.
Commerce City, CO 80022
Telephone: (303) 289-3604

Notices shall be deemed given upon receipt or upon refusal to accept delivery.

13. Miscellaneous.

(a) Construction of Number and Gender. Words of any gender used herein shall be deemed to include the masculine, feminine and neuter, and words used in the singular shall include the plural and vice versa, all as the context hereof may reasonably require.

(b) Forms. In case of a dispute as to the form of any document required hereunder or otherwise contemplated hereby, the Parties agree to act reasonably.

(c) Attorneys' Fees. If a Party shall be required to employ an attorney to enforce or defend the rights of such Party arising under this Escrow Agreement, the prevailing Party shall be entitled to cover reasonable attorneys' fees and cost of suit.

(d) Integration. This Escrow Agreement contains the complete Escrow Agreement between the Parties with respect to the subject matter hereof and cannot be varied except by the written Escrow Agreement of the Parties. The Parties agree that there are no oral Escrow Agreements, understandings, representations or warranties which are not expressly set forth herein.

(e) Business Day. If any date herein set forth for the performance or any obligations by Seller or Buyer or for the delivery of any item, instrument or notice as herein provided should be on a Saturday, Sunday, or legal holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday, or legal holiday. As used herein, the term "legal holiday" means any federal or state holiday for which financial institutions or post offices are generally closed in the State of Colorado.

(f) Multiple Counterparts. This Escrow Agreement may be executed in one or more counterparts, and all so executed shall constitute one (1) and the same Escrow

Agreement, binding upon the Parties hereto, and notwithstanding that all of the Parties are not signatories to the same counterparts.

(g) Time of the Essence. Time is of the essence of this Escrow Agreement and every provision hereof.

(h) Choice of Law, Waiver of Jury Trial and Certain Damages. THIS ESCROW AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE UNITED STATES OF AMERICA AND THE INTERNAL LAWS OF THE STATE OF COLORADO, WITHOUT REGARD TO ITS CONFLICT RULES. THE EXCLUSIVE VENUE FOR ANY LITIGATION OR DISPUTE ARISING UNDER THE TERMS OF THIS ESCROW AGREEMENT SHALL BE ADAMS COUNTY DISTRICT COURT IN THE STATE OF COLORADO WHERE THE PARTIES HERETO EXPRESSLY SUBMIT TO THE JURISDICTION OF ALL FEDERAL AND APPLICABLE STATE COURTS LOCATED IN THE STATE OF COLORADO AND CONSENT THAT THEY MAY BE SERVED WITH ANY PROCESS OR PAPER WITHIN OR WITHOUT THE STATE OF COLORADO IN ACCORDANCE WITH APPLICABLE LAW. THE PARTIES HERETO SHALL AND THEY HEREBY DO INTENTIONALLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER UNDER THE TERMS OF THIS ESCROW AGREEMENT. THE PARTIES FURTHER WAIVE THE RIGHT TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES, ALONG WITH JOINT AND SEVERAL LIABILITY, IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT WITH RESPECT TO THE TERMS OF THIS ESCROW AGREEMENT.

(i) Severability. If any provision of this Escrow Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, and this Escrow Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Escrow Agreement, and the remaining provisions of this Escrow Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Escrow Agreement. Furthermore, in lieu of such illegal invalid or unenforceable provision there shall be added automatically as a part of this Escrow Agreement, a provision as similar in terms to such illegal invalid or unenforceable provision as may be possible and be legal valid and enforceable.

(j) Negotiation by Counsel. The Parties acknowledge that each Party and its counsel have reviewed and revised this Escrow Agreement, and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Escrow Agreement or any amendments or exhibits hereto.

(k) Authority of Signatory. Each of the Seller signatories hereto individually represents and warrants that he or she has full right and authority to execute this Escrow Agreement on behalf of the Party named herein and that this Escrow Agreement is a valid and binding obligation of such Party, subject to its terms.

(l) Seller's, Buyer's, and City's Representatives. The individuals executing this Escrow Agreement on behalf of Seller, Buyer, and City are doing so in their respective representative capacities only, solely as representatives of Seller, Buyer, and City, and any liability resulting hereunder based upon the actions of such individual shall merely be that of Seller, Buyer, or City and not such individual. The individuals are acting for and on behalf of Seller, Buyer, and City in a capacity as an employee of Seller, Buyer, and City and are in no manner expressly or impliedly making any representations or warranties in an individual capacity. Seller, Buyer, and City respectively waive any right to sue such named individuals in their individual capacity or to seek any personal judgment or claim against such named individuals.

(m) Binding Effect. This Escrow Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, legal representatives, successors and assigns, wherever the context so requires or permits.

(n) Heading. The article headings contained herein are for purposes of identification only and shall not be considered in construing this Escrow Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed the foregoing Agreement as of the Effective Date.

ESCROW AGENT:

LAND TITLE GUARANTEE COMPANY

By: _____

Name: _____

Title: _____

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed the foregoing Agreement as of the Effective Date.

SELLER:

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

By: _____

Name: _____

Its: _____

Date: _____

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed the foregoing Agreement as of the Effective Date.

CITY:

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

By: _____

Name: _____

Its: _____

Date: _____

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed the foregoing Agreement as of the Effective Date.

BUYER:

Greyhound Park LLC, a Colorado limited liability company

By: _____

Name: _____

Its: _____

Date: _____