

**ASSIGNMENT AND ASSUMPTION AGREEMENT  
(Greyhound Park – Tract D-2)**

This Assignment and Assumption Agreement (the “**Assignment**”) dated as of \_\_\_\_\_ (the “**Effective Date**”) is made by and between GREYHOUND PARK MASTER DEVELOPER LLC, a Colorado limited liability company (together with any successors or assigns thereto, the “**Assignor**”), and GREYHOUND PARK APARTMENTS LLLP, a Colorado limited liability limited partnership, (the “**Assignee**”). This Assignment is subject to the written consent of the URBAN RENEWAL AUTHORITY OF THE CITY OF COMMERCE CITY, COLORADO (together with any successors or assigns thereto, the “**Authority**”), a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado and the CITY OF COMMERCE CITY, COLORADO, a home rule municipality under the laws of the State of Colorado (the “**City**”). Terms not otherwise defined within the text below are defined in the Second Amended and Restated Phased Redevelopment Agreement for the Mile High Greyhound Park dated August \_\_\_\_, 2020 (together with any permitted amendments thereto the “**Agreement**”). The Agreement was entered into in conjunction with the Purchase and Sale Agreement between the Authority and the Assignor dated June 17, 2019, as amended (the “**PSA**”).

**WITNESSETH**

WHEREAS, the Authority is a body corporate and has been duly created, organized, established and authorized to transact business and exercise its powers as an urban renewal authority within the City, all under and pursuant to the Colorado Urban Renewal Law, constituting Sections 31-25-101 et seq., Colorado Revised Statutes (the “**Act**”); and

WHEREAS, in August, 2011, the Authority purchased the approximately 65 acre former Mile High Greyhound Park (the “**Property**”) and, in 2019, selected Greyhound Park LLC to serve as the master redeveloper, and Greyhound Park LLC has assigned its rights and obligations as master redeveloper to Assignor; and

WHEREAS, the City Council of the City approved an urban renewal plan under the Act, known as “The Mile High Greyhound Park Urban Renewal Plan” (the “**Urban Renewal Plan**”); and

WHEREAS, within the Mile High Greyhound Park Urban Renewal Area circumscribed by the aforementioned Urban Renewal Plan, Assignor, as Redeveloper under the Agreement, agreed to construct certain Improvements all in furtherance of the Urban Renewal Plan; and

WHEREAS, in order to provide funds to meet obligations with respect to activities and operations of the Authority in connection with and in accordance with the Urban Renewal Plan and the Act, the Authority has designated one or more Property Tax Increment Areas within the Mile High Greyhound Park Urban Renewal Area; and

WHEREAS, Section 2.1 of the Agreement provides that the Assignor (in its capacity as the Redeveloper) shall undertake certain Improvements (as defined in the Agreement) with respect to the Property. In addition, the City and Greyhound Park LLC have entered into a Public Improvements Agreement (Mile High Greyhound Park) dated August \_\_\_\_, 2020 (the “**PIA**”), which spells out certain obligations of the Redeveloper under the Agreement relating to the installation of

public improvements required in connection with the redevelopment of the Property and which runs with the land and will be binding on Assignor and Assignee with respect to the Property; and

WHEREAS, Greyhound Park Apartments GP LLC, a Colorado limited liability company (“**Purchaser**”) has purchased a portion of the Property, described on Exhibit A attached hereto (“**Tract D2**”) and Purchaser is selling Tract D2 to Assignee. Assignee desires to bring about the construction of certain of the Improvements on and adjacent to Tract D2 and to assume certain obligations and rights under the Agreement with respect to Tract D2 as more particularly set forth herein; and

WHEREAS, in order to give effect to the Agreement and pursuant to the PSA, and to further define the agreement of the parties with respect to the use of Buyer’s Escrow Funds, the Authority and Assignor, as Redeveloper, have entered into an Escrow Agreement [Greyhound Park Tract D2] dated August \_\_\_, 2020 (the “**Tract D2 Escrow Agreement**”), under which certain funds have been placed into escrow to pay costs of completing the Tract D2 Improvements (as defined below); and

WHEREAS, Assignor, Purchaser, and Assignee are desirous of entering into certain agreements subject to the consent of the Authority and the City pertaining to the rights and obligations of the parties hereto pursuant to the Agreement.

### W I T N E S S E T H

IN CONSIDERATION OF THE PREMISES and other good and valuable consideration the receipt and adequacy of which is hereby acknowledged the Parties hereto agree as follows:

1. Assignment. The Assignor hereby assigns, transfers and sets over to Assignee all of Assignor’s right, title and interest in and to the rights and obligations of Assignor under the Agreement as such rights, liabilities and obligations pertain solely to the Tract D2 as of the Effective Date. This shall include: (i) the construction of the Improvements described on Exhibit B, attached hereto (the “**Tract D2 Improvements**”) and (ii) all construction, insurance, indemnification and any performance liability arising therefrom. Assignee shall specifically not be responsible for payment of the initial installation cost for Project Art as defined in the Agreement, which responsibility shall remain with Assignor. In addition, as provided in more detail in Section 4, below, Assignor hereby grants to Assignee certain rights with respect to the Tract D2 Escrow Agreement.
2. Assumption. Subject to Section 4, below, as of the Effective Date, Assignee assumes all obligations and liability of Assignor under the Agreement pertaining to the construction of the Tract D2 Improvements, and only as to the Tract D2 Improvements, including without limitation an assumption of all obligations set forth in Section 1 above.
3. Consent. This Assignment is subject to the written consent of the Authority and the City attached hereto as Exhibit C.
4. Construction Obligations of Assignor; Reimbursement.

(a) In order to satisfy the obligations applicable to the Property under the Agreement and the PIA, Assignor has entered into two construction contracts for the construction of the Improvements, one covering the Tract D2 Improvements (the “**Tract D2 Improvement Contract**”) and the other for the Improvements on the balance of the Property. Assignor will assign the Tract D2 Improvement Contract to

Assignee, and Assignee will designate Assignor to administer the Tract D2 Improvement contract on behalf of Assignee.

(b) Assignor agrees that, upon a failure to carry out the work on the Tract D2 Improvements in accordance with the terms of the Tract D2 Improvement Contract, Assignee may assume the rights and responsibilities of Assignor under the Tract D2 Escrow Agreement, including taking actions to draw funds under the Tract D2 Escrow Agreement to pay the costs of the Tract D2 Improvements.

(c) Assignor acknowledges and agrees that, upon notice to Assignor from Wells Fargo Affordable Housing Community Development Corporation (the “Investor”), which is the investor limited partner of Assignee, the Investor may take any actions otherwise available to Assignee under this Assignment.

5. Property Tax Exemption. Assignor and Assignee acknowledge that Assignee will seek to obtain a property tax exemption for the Project, and specifically plans to obtain an exemption pursuant to C.R.S. § 29-4-227.

6. Miscellaneous.

(a) Limitation of Rights. With the exception of rights herein expressly conferred upon the parties, nothing expressed or to be implied by this Assignment is intended or shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect to this Assignment or any covenants, conditions and provisions hereof.

(b) Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given (i) one (1) business day after deposit with a nationally-recognized overnight delivery service, (ii) three (3) business days after mailed by certified or registered mail, postage prepaid, addressed to the appropriate Notice Address or at such other address or addresses as either party hereto shall designate in writing to the other parties hereto and the Authority.

(c) Waiver. No failure by either party hereto to insist upon the strict performance of any covenant, duty, agreement or condition of this Assignment, or to exercise any right or remedy consequent upon a breach of this Assignment, shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Either party by giving notice to the other party may, but shall not be required to, waive any of its rights or any conditions to any of its obligations hereunder. No waiver shall affect or alter the remainder of this Agreement, but each and every covenant, agreement, term and condition of this Assignment shall continue in full force and effect with respect to any other then existing or subsequent breach.

(d) Attorneys’ Fees. In any proceeding brought to enforce the provisions of this Assignment, the unsuccessful party shall pay the prevailing party therein reasonable attorneys’ fees, actual court costs and other expenses incurred.

(e) Conflicts of Interest. The Authority shall not allow and, except as disclosed in writing to the Authority, neither the Assignor nor the Assignee shall not knowingly permit, any of the following persons to have any interest, direct or indirect, in their interest under this Assignment: a member of the governing body of the Authority or of the City; an employee of the Authority or of the City who exercises responsibility concerning the Project; or an individual or firm retained by the City or the Authority who has performed consulting or other professional services in connection with the Project. The Authority shall not allow and neither the Assignee nor the Assignor shall knowingly permit any of the above persons or entities to participate in any decision relating to this Assignment that affects his or her personal interest.

(f) Titles of Sections. Any titles of the several parts and Sections of this Assignment are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

(g) Authority Not a Partner; Assignor and Assignee Not Authority's Agent. Notwithstanding any language in this Assignment or any other agreement, representation or warranty to the contrary, the Authority shall not be deemed or constituted a partner or joint venturer of either the Assignor or Assignee, and neither the Assignee nor the Assignor shall be the agent of the Authority, and the Authority shall not be responsible for any debt or liability of either Assignor or Assignee.

(h) Applicable Law. The laws of the State of Colorado shall govern the interpretation and enforcement of this Agreement, without giving effect to choice of law principles.

(i) Binding Effect. This Assignment shall be binding on and inure to the benefit of the parties hereto, (including the Authority) and their successors and assigns.

(j) Further Assurances. The parties hereto agree to execute such documents, and take such action, as shall be reasonably requested by the other party hereto to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained and the intent hereof.

(k) Time of Essence. Time is of the essence of this Assignment. The parties will make every reasonable effort to expedite the subject matter hereof and acknowledge that the successful performance of this Assignment requires their continued cooperation.

(l) Severability. If any provision, covenant, agreement or portion of this Assignment, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Assignment and, to that end, any provisions, covenants, agreements or portions of this Assignment are declared to be severable. Furthermore, such illegal, invalid or unenforceable provision shall be automatically replaced with a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and still be legal, valid and enforceable, and this Assignment shall be deemed reformed accordingly.

(m) Good Faith; Consent or Approval. In performance of this Assignment, the parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously or unreasonably withhold or delay any approval required by this Assignment. Except as otherwise provided in this Assignment, whenever consent or approval of either party is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed. The parties hereto agree and acknowledge that in each instance in the Agreement or elsewhere where the Authority is required or has the right to review or give its approval or consent, no such review, approval or consent shall imply or be deemed to constitute an opinion by the Authority, nor impose upon the Authority, any responsibility for the design or construction of building elements, including, but not limited to, the structural integrity or life/safety requirements or adequacy of budgets or financing or compliance with any applicable federal or state law, or local ordinance or regulation, including the Environmental Laws. All reviews, approval and consents by the Authority under the terms of this Assignment or Agreement are for the sole and exclusive benefit of the Assignee and Assignor, where applicable and no other person or party shall have the right to rely thereon.

(n) Counterparts. This Assignment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(o) Nonliability of Authority Officials and Employees. No council member, commissioner, board member, official, employee, agent or consultant of the Authority or the City shall be

personally liable to the Assignee or Assignor in the event of a breach of this Assignment for any amount that may become due to the Assignor or Assignee under the terms of this Assignment, if any.

IN WITNESS WHEREOF, the Authority has caused these presents to be executed in its corporate name and with its official seal hereunto affixed and attested by its duly authorized officials; and the Assignor and Assignee have caused these presents to be executed by its duly authorized representative, as of the date first above written.

[The remainder of this page is intentionally left blank.]

ASSIGNOR:

GREYHOUND PARK  
MASTER DEVELOPER LLC,

By: \_\_\_\_\_  
Name: Joseph A. DelZotto  
Title: Manager

STATE OF COLORADO                    )  
  ) ss.  
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me as of the \_\_\_\_ day of August, 2020, by Joseph A. DelZotto as Manager of Greyhound Park Master Developer LLC, a Colorado limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for the  
State of Colorado

ASSIGNEE:

GREYHOUND PARK APARTMENTS LLLP

By: Greyhound Park Apartments GP LLC,  
General partner

By: \_\_\_\_\_  
Name: Joseph A. DelZotto  
Title: Manager

STATE OF COLORADO                    )  
  ) ss.  
CITY AND COUNTY OF DENVER)

Acknowledged, subscribed and sworn to before me on this \_\_\_\_\_ day of August, 2020, by Joseph A. DelZotto, as Manager of Greyhound Park Apartments GP LLC, general partner of Greyhound Park Apartments LLLP, a Colorado limited liability limited partnership.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for the  
State of Colorado

**EXHIBIT A**

**Description of Tract D2**



## **EXHIBIT B**

### **Tract D2 Improvements**

The Tract D2 Improvements shall consist of (i) the improvements defined as the B2 Improvements and the C2 Improvements through Section I.A of the PIA, more specifically described in the final approved Mile High Greyhound Park Infrastructure PUD Development Plans, currently stamped by Developer's engineer as of June 18, 2020 ("Plans") subject to approved amendments, and (ii) the improvements described on Exhibit C to the Agreement, to the extent that those improvements apply to Tract D2, which provisions and Exhibits are incorporated into this Assignment.

## EXHIBIT C

### **Consent and Acknowledgement**

This Consent and Acknowledgement (this “**Consent**”) is executed on the dates set forth below by 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 (the “**Authority**”), and the City of Commerce City Colorado, a home rule municipality under the laws of the State of Colorado (the “**City**”), and is made a part of the Assignment and Assumption Agreement dated August \_\_, 2020 executed by Greyhound Park Master Developer LLC, a Colorado limited liability company and Greyhound Park Apartments LLLP, a Colorado limited liability partnership (the “**Assignment**”). Certain capitalized terms used in but not defined in this Consent are used below with the meaning given them in the Assignment.

#### 1. **Consent to Assignment.**

(a) Subject to the terms and conditions contained in the Agreement, the Authority hereby consents to (i) the assignment by Assignor of its rights under the Agreement with respect to Tract D2, and (ii) the assumption by Assignee of the specified liabilities of Assignor under the Agreement as they pertain to Tract D2 (and solely as they pertain to Tract D2), as set forth in paragraphs 1 and 2 of the Assignment. Assignee shall not further assign the Agreement or otherwise transfer its interest in the Property or the Agreement to any person or entity except in strict accordance with the terms of the Agreement.

(b) Assignor shall remain liable as the primary obligor for all obligations under the Agreement, past, present and future. This Assignment in no manner diminishes Assignor’s obligations nor the Authority’s ability to enforce the Agreement. The liability of Assignor and any immediate and remote successor in interest of Assignor (by assignment or otherwise), and the due performance of the obligations of the Agreement on Assignor’s part to be performed or observed, shall not in any way be discharged, released, or impaired by any (i) agreement which modifies any of the rights or obligations of the parties under the Agreement, (ii) stipulation which extends the term within which any obligation under the Agreement are to be performed, (iii) waiver of the performance of an obligation required under the Agreement or (iv) failure to enforce any of the obligations set forth in the Agreement.

#### 2. **Certain Matters Relating to the Improvements.** By executing this Agreement, Assignor, Assignee, the Authority and the City acknowledge and agree as follows:

(a) The Authority acknowledges and agrees that the scope of the Improvements required with respect to Tract D2 by the MDA with respect to the development of affordable housing, proposed as of the Effective Date of the PIA, is defined as the B2 Improvements and the C2 Improvements, as defined through the PIA (insofar as Exhibit C relates to Tract D2).

(b) The City and the Authority acknowledge and agree that, in order for Assignee to receive a certificate of occupancy for the vertical construction on Tract D2, Assignee is not required to complete any work under the MDA or the PIA, other than completion of the Improvements with respect to Tract D2 Improvements, as defined in this Assignment, subject to Section XV.B of the PIA.

(c) The Authority agrees that the Assignee may take any action permitted by Assignor under the Tract D2 Escrow Agreement and that, upon notice from the Investor to the Authority, the Investor may take any action permitted by Assignor or Assignee under the Tract D2 Escrow Agreement.

(d) Without limiting the City's rights under the PIA, if the City exercises any of its rights under Sections II.A.3, II.B.4 or XV of the PIA with respect to Tract D2, the City shall also give notice to Assignee and the Investor and will accept any actions by the Assignee or the Investor with respect to Tract D2 in the same manner as if the actions had been performed by Assignor.

(e) All notices to the Investor under this Assignment, and copies of any notices from the Authority or the City to Assignor or Assignee under this Assignment, the MDA or the PIA, shall be given to the Investor at the following address: Wells Fargo Affordable Housing Community Development Corporation, MAC D1053-170, 301 South College Street, 17th Floor, Charlotte, NC 28288, Attention: Director of Tax Credit Asset Management with a copy to Pillsbury Winthrop Shaw Pittman LLP, 1200 Seventeenth Street, NW, Washington, D.C. 20036, Attention: Craig A. de Ridder, Esq.

Each of the undersigned consents and agrees to the provisions of this Assignment and Assumption Agreement.

(SEAL)

URBAN RENEWAL AUTHORITY OF THE  
CITY OF COMMERCE CITY, COLORADO

Attest:

\_\_\_\_\_  
By: Chairman

\_\_\_\_\_  
Clerk

Approved as to Form:

\_\_\_\_\_  
General Counsel to the Authority

**CITY OF COMMERCE CITY**

ATTEST:

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Roger Tinklenberg, Interim City Manager

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Dylan A. Gibson, City Clerk

Approved as to form:

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City Attorney