

**ASSIGNMENT AND ASSUMPTION AGREEMENT  
(Assignment to Greyhound Park Master Developer LLC)**

This Assignment and Assumption Agreement (the "**Assignment**") dated as of August \_\_\_\_, 2020 (the "**Effective Date**") is made by and between GREYHOUND PARK LLC, a Colorado limited liability company (together with any successors or assigns thereto, the ("**Assignor**") and Greyhound Park Master Developer LLC, Colorado limited liability company (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. Terms not otherwise defined within the text below are defined in the Amended and Restated Phased Redevelopment Agreement for the Mile High Greyhound Park dated June 17, 2019 (together with any permitted amendments thereto (the "**Agreement**"), a memorandum of which was filed of record with the Clerk and Recorder of the City and County of Adams on July 17, 2019, at Reception No. 2019000055999.

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 and, in 2019, selected the Assignor to serve as the master redeveloper; 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, Assignor desires to assign to Assignee, and Assignee desires to receive an assignment from Assignor of, all rights of Assignor under the MDA, and Assignor and Assignee are desirous of entering into certain agreements subject to the consent of the Authority pertaining to the rights and obligations of the parties hereto pursuant to the Agreement.

**WITNESSETH**

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 and Assumption. As of the Effective Date, Assignor hereby irrevocably assigns, sets over, transfers and conveys to Assignee all of Assignor's right, title and interest in and to the Agreement. Assignee hereby accepts this Assignment and the rights granted herein, and Assignee hereby expressly assumes, for itself and its successors, assigns and legal representatives, the Agreement and all of the obligations and liabilities, fixed and contingent, of Assignor thereunder with respect to the Agreement which arise from and after the Assignment Date, and Assignee agrees to (a) be fully bound by all of the terms, covenants, agreements, provisions, conditions, obligations and liability of Assignor thereunder, and (b) keep, perform and observe all of the covenants and conditions contained therein on the part of Assignor to be kept, performed and observed..

2. Consent of Authority; No Further Assignment. The Authority hereby consents to the Assignment, subject to the terms and conditions contained herein and in the Agreement. 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.

3. No Release; Assignor's Continuing Obligations. 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 (a) agreement which modifies any of the rights or obligations of the parties under the Agreement, (b) stipulation which extends the term within which any obligation under the Agreement are to be performed, (c) waiver of the performance of an obligation required under the Agreement or (d) failure to enforce any of the obligations set forth in the Agreement.

4. Assessment. Neither Assignor nor Assignee shall seek to appeal any property tax assessments or valuations of any portion of the property within the Property Tax Increment Area owned or controlled by such party prior to the termination of the Agreement.

5. 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.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the Authority hereby consents to the actions of Assignor and Assignee as described above, and 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.

(SEAL)

URBAN RENEWAL AUTHORITY OF THE  
CITY OF COMMERCE CITY, COLORADO

Attest:

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

\_\_\_\_\_  
Clerk

Approved as to Form:

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

STATE OF COLORADO

, )  
) ss.  
)

\_\_\_\_\_  
COUNTY

The foregoing instrument was acknowledged before me as of the \_\_\_\_\_ day of August, 2020, by \_\_\_\_\_ as Mayor and \_\_\_\_\_ as Clerk of the City of Commerce City, Colorado, a home municipality under the laws of the State of Colorado.

WITNESS MY HAND AND OFFICIAL SEAL.

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

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

ASSIGNOR:

GREYHOUND PARK LLC,  
a Colorado limited liability  
company

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 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 MASTER DEVELOPER LLC,  
a Colorado limited liability company

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 Master Developer LLC.

WITNESS MY HAND AND OFFICIAL SEAL.

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

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