

MAINTENANCE AGREEMENT
FOR
TRACT E AND TRACT J
MILE HIGH GREYHOUND PARK

THIS MAINTENANCE AGREEMENT (this “**AGREEMENT**”) is made as of _____, 20__ 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 (“**CCURA**”) and GREYHOUND PARK COMMUNITY ASSOCIATION, INC., a Colorado nonprofit corporation (the “**Association**”).

Recitals

A. The CCURA holds fee simple title to Tract A (“**Tract A**”) and Tract B (“**Tract B**”) as depicted on that certain plat of Mile High Greyhound Park recorded in the real estate records of Adams County, Colorado on _____, at Reception No. _____ (the “**Plat**”) and may convey Tract A and/or Tract B to a third party for future development.

B. The Association holds fee simple title to Tract E (“**Tract E**”) and Tract J (“**Tract J**”) as depicted on the Plat (which tracts are sometimes hereinafter referred to herein collectively as the “**Common Elements**”).

C. Pursuant to that certain Public Improvements Agreement between the City of Commerce City and Greyhound Park LLC (“**Greyhound**”) dated _____, and recorded in the real estate records of Adams County, Colorado at Reception No. _____ (the “**PIA**”), Greyhound is to provide certain infrastructure and landscaping improvement on the Common Elements.

D. The Association has agreed that Tract E shall be used and maintained as a park for the benefit of owners, guests, occupants, and invitees of the various tracts of real property identified on the attached Exhibit A (“**Exhibit A**”).

E. CCURA and the Association acknowledge that Tract J shall be used and maintained as a storm water detention facility and that said facility is essential in connection with the development of a mixed-use project on various tracts of real property identified on Exhibit A.

F. Upon the City of Commerce City’s issuance of a letter of “Initial Acceptance” as that term is defined in the PIA for the infrastructure and landscaping improvements to be located on Tract E and Tract J (“**Initial Acceptance**”), the Association will be tasked with the perpetual management and maintenance of those improvements located on the Common Elements which have received Initial Acceptance.

G. CCURA acknowledges that the owners of Tract A and Tract B will benefit from the park to be located on Tract E and that the owner of Tract A will benefit from the storm water detention facilities to be located on Tract J and, accordingly, agrees, on behalf of itself and all

future owners of Tract A and Tract B, to provide for a contribution to the on-going maintenance of Tract E and Tract J on the terms set forth herein.

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements contained herein, the Parties hereto agree as follows:

1. **Incorporation of Recitals.** CCURA and Association incorporate the Recitals above into this Agreement.
2. **Covenants Running with the Land.** All covenants, conditions, restrictions, reservations, easements, charges, liens and other provisions of this Agreement are covenants running with the land, or equitable servitudes, as the case may be. The obligations, burdens and benefits created by this Agreement shall bind and inure to the benefit of the owners of Tract A, Tract B, and the Association and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives. For the avoidance of doubt, each and all of the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth herein shall be binding upon the grantee-owner or other person claiming through any deed or other instrument in connection with title to Tract A and Tract B and his or her heirs, executors, administrators, successors and assigns. If either Tract A or Tract B, as the case may be, is owned by more than one person or entity, each owner shall be jointly and severally liable with all owners thereof for all assessments and other charges levied by the Association pursuant to the terms hereof. If either Tract A or Tract B, as the case may be, is subdivided, Exhibit A to this Agreement shall be amended to allocate responsibility for all assessments and other charges levied by the Association between the subdivided properties pursuant to the terms hereof.
3. **Use and Benefit of Common Elements.** The Association and CCURA acknowledge and agree that, after Initial Acceptance, (i) the owners of the tracts listed on Exhibit A (including, but not limited to, the owner of Tract A and the owner of Tract B), and their respective employees, guests, customers, invitees, and occupants, shall have the right to use and enjoy the park to be located on Tract E, subject to such reasonable rules and regulations as may from time to time be promulgated by the Association with reasonable input from the owners of Tracts A and B, and (ii) the Association shall be responsible to maintain said park as set forth herein. The Association and CCURA further acknowledge and agree that, in order to accommodate the horizontal and vertical development currently contemplated with respect to the tracts identified on Exhibit A, the Association, after Initial Acceptance, shall be responsible for the upkeep and maintenance of the storm water drainage facilities to be located on Tract J.
4. **Tract E and Tract J Expenses.** The Association agrees for itself and its successors and assigns, that it will regularly and routinely manage, inspect, clean and maintain the park located on Tract E ("**Tract E Expenses**") and the storm water detention pond located on Tract J ("**Tract J Expenses**"), and otherwise keep the same in good repair. Responsibility for the total annual cost of the Tract E Expenses and the Tract J Expenses shall be allocated by the Association among the respective owners of the

tracts of real property based on the percentages identified on Exhibit A. Without limiting the generality of the foregoing, the Tract E Expenses and the Tract J Expenses shall consist of any expenses that the Association deems reasonably necessary in connection with the operation, maintenance, and repair (including a reasonable allowance for reserves and contingencies) of Tract E and Tract J respectively, including, but not limited to, such insurance coverage as the Association deems prudent, the cost of any applicable taxes or other governmental fees (excluding governmental fees associated with the initial improvement of Tract E and Tract J), as well as the cost to comply with all applicable statutes, ordinances, rules and regulations. For the avoidance of doubt and notwithstanding anything to the contrary contained herein, the terms "Tract E Expenses" and "Tract J Expenses" shall include all expenses included in the term "Common Expenses" as defined in that certain "Declaration of Covenants and Restrictions for Mile High Greyhound Park" of even date herewith and recorded in real estate records of Adams County, Colorado at Reception No. _____ (the "Declaration"), which definition shall not be modified without the consent of CCURA as long as CCURA is the owner of either Tract A or Tract B. To the extent necessary to perform its obligations hereunder, the Association and its agents shall have the right of ingress and egress in, to, through, over, under and across Tract A and Tract B, upon reasonable notification and coordination with the respective owners of Tract A and Tract B.

5. **Tract A and Tract B Assessment and Allocation:** Upon Initial Acceptance, the Association shall assess the owner of Tract A (including the CCURA while it is in title to Tract A) for the percentage of Tract E Expenses and Tract J Expenses as set forth in Exhibit A. The Association shall also assess the owner of Tract B (including the CCURA while it is in title to Tract B) for the percentage of Tract E Expenses as set forth in Exhibit A. Notwithstanding the foregoing, if either Tract A or Tract B is subdivided or otherwise divided, the percentage set forth on Exhibit A shall be reallocated among the new owners of Tract A and/or Tract B, however no such subdivision or division will change the total percentage of either Tract E Expenses or Tract J Expenses allocated to Tract A and Tract B as set forth in Exhibit A. The obligations of the owner of Tract A and the owner of Tract B under this Agreement shall not commence until the date of Initial Acceptance with respect to the infrastructure improvements located on Tract E and Tract J, respectively. Similarly, the obligations of the owner of Tract A and the owner of Tract B under this Agreement shall not commence until the date of Initial Acceptance with respect to the landscaping improvements located on Tract E and Tract J respectively. The owner of Tract A and Tract B, or any portion thereof (including CCURA during the period in which it is in title to any portion of Tract A and/or Tract B) shall be liable to pay for the Tract E Expenses and Tract J Expenses as allocated pursuant to this paragraph during the period of such person's ownership.
6. **Budget.** Prior to the first assessment for Tract E Expenses and Tract J Expenses, and thereafter on an annual basis (or more often if the Association deems necessary), the Association shall adopt a budget (the "**Budget**") of the cash requirements, including any necessary reserves, needed by the Association to provide for the administration and performance of its duties under this Agreement during the period for which the

Budget applies. Within thirty (30) calendar days after adopting each Budget, the Association shall mail or otherwise deliver, including posting the budget on the Association's website, if applicable, a summary of the applicable annual budgets to the owner(s) of Tract A and Tract B. Any Tract E assessment and the Tract J assessment which are the responsibility of the owner(s) of Tract A or the owner(s) of Tract B shall be fully paid within thirty (30) calendar days after the due date thereof as established by the Association, which due date shall correspond with the due date of the obligations for the other tracts identified on Exhibit A.

7. **Assessment Lien.** The Association shall have a continuing lien on Tract A and Tract B for any Tract E Expenses and Tract J Expenses as allocated and assessed pursuant to the provisions of this Agreement (the "**Assessment Lien**"), provided, however, no Assessment Lien shall exist, be recorded or be enforced against CCURA during the period of its ownership of Tract A or Tract B. No owner of either Tract A or Tract B shall be exempt from liability for any such Tract E Expenses or Tract J Expenses by waiving the use or enjoyment of Tract E or Tract J or abandoning the tract against which such Tract E Expenses and/or Tract J Expenses are assessed. Any Tract E Expense assessment or Tract J Expenses assessment (each an "**Assessment**") on Tract A or Tract B which is not fully paid within thirty (30) calendar days after the due date thereof, as established by the Association, shall bear interest at the rate of eighteen percent (18%), on a per annum basis to accrue monthly, from the due date. The amount of any delinquent assessment of Tract E Expenses or Tract J Expenses which pertain to either Tract A or Tract B shall be increased by the amount of costs, including reasonable attorney fees, incurred by the Association in the collection process. Further, the Association may foreclose its Assessment Lien and/or bring an action at law or in equity, or all of the same, against any person personally obligated to pay such overdue Assessments. An action at law or in equity by the Association against a person to recover a money judgment for unpaid Assessments may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's Assessment Lien therefor. Likewise, the act of obtaining of a money judgment shall not preclude the foreclosure of the Association's Assessment Lien so long as the judgment remains unsatisfied. Foreclosure or attempted foreclosure by the Association of its Assessment Lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its Assessment Lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase the subject property at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same. Notwithstanding the provisions in the foregoing Section 7, although no Assessment Lien shall exist, be recorded or be enforced against CCURA, nothing shall prevent the Association for seeking a money judgement against CCURA for an unpaid Assessment, including interest as stated above as well as attorney fees and other collection costs.
8. **Disputes:** Disputes, claims or grievances arising out of or relating to the interpretation or application of this documents or the administration, if any, and all disputes between the owner(s) of Tract A and/or Tract B, on the one hand, and the

Association, on the other hand, shall be submitted to arbitration before a single neutral arbitrator at the American Arbitration Association in Denver, Colorado, and the parties thereto shall accept the arbitrator's decision as final and binding. The Commercial Arbitration Rules of the American Arbitration Association, as amended and in effect from time to time hereafter, shall be applicable to such arbitration. If the parties cannot agree upon an arbitrator, the American Arbitration Association in Denver, Colorado shall select a neutral arbitrator at random from its available pool.

9. **Indemnification and Hold Harmless:** The Association agrees, for itself and its successors and assigns, that it will indemnify, defend, and hold the owner(s) of Tract A and the owner(s) of Tract B, and their respective successors and assigns, harmless from any and all loss, costs, damage (including reasonable attorney fees and costs), injury, liability, claim, lien, demand, action and causes of action whatsoever, whether at law or in equity, arising from or related to its intentional or negligent acts, errors or omissions or that of their agents, officers, servants, employees, invitees and licensees which arise by reason of the operation, inspection, cleaning (including analyzing and disposing of any solid or hazardous wastes as defined by State and/or Federal environmental laws and regulations), maintenance, and repair of Tract E and Tract J. Similarly the owner(s) of Tract A and the owner(s) of Tract B agree for themselves, their respective successors and assign, that they will each indemnify, defend, and hold the Association, and its successors and assigns, harmless from any and all loss, costs, damage (including reasonable attorney fees and costs), injury, liability, claim, lien, demand, action and causes of action whatsoever, whether at law or in equity, arising from or related to their respective intentional or grossly negligent acts, errors or omissions or that of their agents, officers, servants, employees, invitees and licensees which occur on Tract E and/or Tract J or which may arise by reason of the presence or disposal of any solid or hazardous materials or wastes (as defined by State and/or Federal environmental laws and regulations) on Tract E and Tract J.
10. **Provisions Applicable to CCURA:** Notwithstanding anything to the contrary contained herein, this Agreement does not expressly or implicitly impose on CCURA an obligation to inspect, clean, repair and/or maintain either Tract E or Tract J. At such time as CCURA no longer holds title to Tract A and Tract B, the new owner(s) of Tract A and the new owner(s) of Tract B hereby agree that, upon the written request of the Association, and the consent of the new owner(s) of Tract A and Tract B, Tract A and/or Tract B, as applicable, shall be annexed into, and subject to all of the terms conditions, obligations, restrictions, and other terms of, the Declaration.
11. **Severability:** In the event any Court of competent jurisdiction declares any part of this Agreement to be unenforceable, such declaration shall not affect the enforceability of the remaining parts of this Agreement.
12. **Third Parties:** This Agreement does not and shall not be deemed to confer upon or grant to the general public, or any party who is not in title to Tract A or Tract B, any right to claim damages or to bring any lawsuit, action or other proceeding against the Association, CCURA, or their respective successors and assigns, because of any

breach hereof or by reason of any terms, covenants, agreements or conditions contained herein.

13. **No Waiver of Immunity.** Nothing contained in this Agreement constitutes a waiver of sovereign immunity or governmental immunity by CCURA under applicable state laws.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have caused their name to be signed by the signature of their respective duly authorized officials as of the day and year first written above.

URBAN RENEWAL AUTHORITY OF COMMERCE CITY

By: _____

Name: _____

Its: _____

STATE OF COLORADO

COUNTY OF _____

SUBSCRIBED AND SWORN to before me this _____ day of _____ ,
20_____, by _____ , as _____ of _____ .

WITNESS my hand and official seal.

Notary Public, State of Colorado

[SEAL]

My commission:_____

GREYHOUND PARK COMMUNITY ASSOCIATION, INC.

By: _____

Name: _____

Its: _____

STATE OF COLORADO

COUNTY OF _____

SUBSCRIBED AND SWORN to before me this _____ day of _____ ,
20_____, by _____ , as _____ of _____ .

WITNESS my hand and official seal.

Notary Public, State of Colorado

[SEAL]

My commission:_____

EXHIBIT A

The percentage share of Tract E Expenses and Tract J Expenses for the following real property tracts as described in the Plat of Mile High Greyhound Park which was recorded on _____ at Reception No. _____ in the real estate records of Adams County, Colorado are as follows:

<u>Tract</u>	<u>Square Footage</u>	<u>Percentage Share of Tract E and Tract J Expenses</u>
Tract A	190,516	7.00%
Tract B	361,083	14.00%
Tract C-1	134,741	7.61%
Tract C-2	130,816	7.39%
Tract C-3	119,894	6.77%
Tract D-1	454,879	25.68%
Tract D-2	167,061	9.43%
Tract D-3	53,543	3.02%
Tract F	338,360	19.10%
<u>Totals:</u>	1,950,893	100%