

## **ASSIGNMENT AND ASSUMPTION AGREEMENT**

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** (the “Assignment”) is made and entered by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (“City”), and **ZIA SUNNYSIDE SPE, LLC**, a Delaware limited liability company (as successor-in-interest to **CD - INCA, LLC**, a Colorado limited liability company (“CD-Inca”)), whose address is 15710 West Colfax Avenue, Suite 202, Golden, Colorado 80401 (“Zia Sunnyside”), and **KG SUNNYSIDE OWNER, LLC**, a Delaware limited liability company, whose address is c/o Kairoi Residential, 711 Navarro Street, Suite 300, San Antonio, Texas 78205 (“Purchaser”), each individually a “Party” and collectively the “Parties.”

### **RECITALS:**

**WHEREAS**, the City and CD-Inca entered into that certain Loan Agreement dated October 6, 2016 (the “Original Loan Agreement”) involving a loan in the principal amount of \$3,000,000.00 (the “Loan”), which consisted of \$2,000,000.00 of federal Community Development Block Grant (“CDBG”) funds and \$1,000,000.00 of local General Fund funds, for the acquisition of land located at 4001 Inca Street, Denver, Colorado and legally described as (the “Property”): Lots 16 to 30, inclusive, Block 30, Viaduct Addition to Denver, except that portion conveyed to Regional Transportation District by the Deed recorded September 7, 2010 under Reception No. 20100100125, City and County of Denver, State of Colorado; and

**WHEREAS**, CD-Inca executed that certain Deed of Trust for the benefit of the City, dated October 13, 2016, and recorded on October 13, 2016 at Reception No. 2016141996 of the records of City and County of Denver, State of Colorado (the “Deed of Trust”), and encumbering the Property; and

**WHEREAS**, the Deed of Trust secured the repayment of the indebtedness evidenced by that certain Promissory Note dated October 13, 2016 (the “Note”); and

**WHEREAS**, as a condition of receiving the Loan, CD-Inca agreed that a certain proportion of the dwelling units developed on the Property would be subject to affordable housing restrictions for a term of twenty (20) years; and

**WHEREAS**, with respect to the affordability restrictions, the Original Loan Agreement provided that (i) at least ten percent (10%) of the for-sale residential units constructed on the Property must be used as affordable for-sale housing; (ii) at least eleven percent (11%) of the for-

sale residential units constructed on the Property must be used as workforce for-sale housing; and (iii) at least twenty-one percent (21%) of the for-rent residential units constructed on the Property must be used as affordable for-rent housing; and

**WHEREAS**, the affordability restrictions associated with the Original Loan Agreement are evidenced by that certain Sale, Rental, and Occupancy Covenant dated October 13, 2016, and recorded on October 13, 2016 at Reception No. 2016141997 of the records of City and County of Denver, State of Colorado (the “Covenant”); and

**WHEREAS**, in order to obtain financing to develop the property, title to the Property was conveyed to Zia Sunnyside, and Zia Sunnyside developed the Property pursuant to the terms of the Original Loan Agreement and the Scope of Services set forth as Exhibit A to the Original Loan Agreement; and

**WHEREAS**, 434 units were constructed on the Property, and all dwelling units on the Property are for-rent residential units, and the Property did not and does not contain any for-sale residential units; and

**WHEREAS**, pursuant to the terms of the Original Loan Agreement and Covenant, 92 of dwelling units are being used as affordable for-rent residential units and must be used as such for the term of the Covenant and upon the transfer of the Property from CD-Inca to Zia Sunnyside by Special Warranty Deed dated October 3, 2018, and recorded on October 3, 2018 at Reception No. 2018125851 of the records of City and County of Denver, State of Colorado, Zia Sunnyside became the successor-in-interest to CD-Inca’s obligations under Original Loan Agreement and Covenant; and

**WHEREAS**, on or about January 7, 2019, Zia Sunnyside repaid in full the Loan and satisfied the financial obligations secured by the Note and the Deed of Trust; and

**WHEREAS**, upon the Loan being fully repaid, the City recorded a Full Release of Deed of Trust and Release on August 27, 2019 at Reception No. 2019115457 of the records of the City and County of Denver (the “DOT Release”); and

**WHEREAS**, despite the Loan being repaid in full, the Original Loan Agreement provides that the term of the agreement would run concurrent with the period of affordability of affordable housing residential units; additionally, the Original Loan Agreement contains certain programmatic and reporting requirements related to the affordable housing not contained in the Covenant; and

**WHEREAS**, Zia Sunnyside desires to sell and convey the Property to Purchaser; and

**WHEREAS**, to ensure the affordable housing requirements are complied with for the term of the Original Loan Agreement and Covenant, the City requires that Purchaser assume the obligations related to providing affordable housing at the Property and reporting on the affordable housing requirements; and

**WHEREAS**, the Parties desire to amend and assign the terms of the Original Loan Agreement as set forth herein; and

**WHEREAS**, since the execution of the Original Loan Agreement, the City has reorganized the responsibilities of its departments and has transferred the responsibility for overseeing affordable housing investments from the Office of Economic Development (“OED”) to the Department of Housing Stability (“HOST”).

**NOW THEREFORE**, in consideration of the promises herein contained and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and the Parties’ mutual covenants and obligations, the Parties agree as follows:

1. All of the recitals above are hereby confirmed and incorporated herein as part of this Assignment.
2. All references to “Office of Economic Development” and “OED” in the Original Loan Agreement shall be replaced to read “Department of Housing Stability” and “HOST,” respectively.
3. The City hereby consents to the transfer of the Property from Zia Sunnyside to Purchaser.
4. Zia Sunnyside (as successor-in-interest to CD-Inca) hereby assigns, and Purchaser hereby assumes and agrees to perform (to the extent first arising from and after the date hereof) the obligations of Zia Sunnyside (A) related to providing and reporting on the affordable housing contained in (i) Section 7, Section 8, Section 13, and Section 16 of the Original Loan Agreement, and (ii) the Covenant, and (B) under Section 17, Section 19, Section 20.b. (as it relates to Purchaser only) and Section 20.c. (as it relates to Purchaser only) of the Original Loan Agreement.
5. The Parties expressly acknowledge and agree that (i) the Loan was fully disbursed by the City to CD-Inca and the Loan was repaid in full by Zia Sunnyside, and Purchaser is not assuming any financial benefits or obligations related to the Loan; (ii) the Property has been

developed by Zia Sunnyside and is currently providing 92 units for-rent affordable housing pursuant to the requirements of the Original Loan Agreement and Covenant, and Purchaser is not assuming any obligations or responsibilities related to the development or construction of the Project (as defined in the Original Loan Agreement) or the Property; (iii) the first right of refusal provided in Section 31 of the Original Loan Agreement is no longer in effect as the Project has been completed; and (iv) except for the provisions expressly set forth in Section 4 of this Assignment (which effectively amend the Original Loan Agreement) and Sections 26, 28, 29, 30 (provided that all notices to Purchaser as “Borrower” shall be sent to the address set forth in the introductory paragraph of this Assignment) and 33 of the Original Loan Agreement (in each case, solely with respect to matters first arising from and after the date hereof), Purchaser is not assuming (and shall not have any obligations or incur any liability with respect to) any other provisions of the Original Loan Agreement.

6. Except as herein amended or as otherwise provided, the Original Loan Agreement shall continue in effect, and is affirmed and ratified in each and every particular.

7. This Amendment will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

**[THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

**[SIGNATURE PAGES TO FOLLOW]**

**Contract Control Number:**  
**Contractor Name:**

HOST-202370443-01 / OEDEV-201630376-01  
ZIA SUNNYSIDE SPE, LLC  
KG SUNNYSIDE OWNER, LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at  
Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

HOST-202370443-01 / OEDEV-201630376-01  
ZIA SUNNYSIDE SPE, LLC  
KG SUNNYSIDE OWNER, LLC

ZIA SUNNYSIDE SPE, LLC  
(as successor-in-interest to CD INCA, LLC)

By: See attached signature page

Name: See attached signature page  
(please print)

Title: \_\_\_\_\_  
(please print)

ATTEST: [if required]

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

**Contract Control Number:**  
**Contractor Name:**

HOST-202370443-01 / OEDEV-20160386-01  
ZIA SUNNYSIDE SPE, LLC  
KG SUNNYSIDE OWNER, LLC

KG SUNNYSIDE OWNER, LLC

By: See attached signature page

Name: See attached signature page  
(please print)

Title: \_\_\_\_\_  
(please print)

ATTEST: [if required]

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

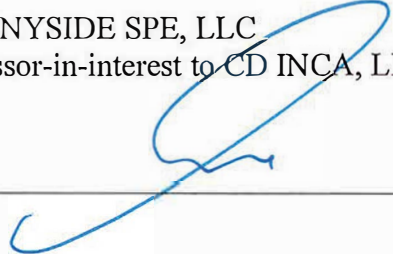
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**Contractor Name:**

HOST-202370443-01 / OEDEV-201630376-01  
ZIA SUNNYSIDE SPE, LLC  
KG SUNNYSIDE OWNER, LLC

ZIA SUNNYSIDE SPE, LLC  
(as successor-in-interest to CD INCA, LLC)

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


Name: Anthony DeSimone  
(please print)

Title: Manager  
(please print)

ATTEST: [if required]

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



**Contract Control Number:**  
**Contractor Name:**

HOST-202370443-01 / OEDEV-20160386-01  
ZIA SUNNYSIDE SPE, LLC  
KG SUNNYSIDE OWNER, LLC

KG SUNNYSIDE OWNER, LLC

By: MCJM

Name: Madison C. Marceau  
(please print)

Title: Authorized Signatory  
(please print)

ATTEST: [if required]

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)