

**ASSIGNMENT AND ASSUMPTION OF
DEVELOPMENT AGREEMENT
AND
PURCHASE AND SALE AGREEMENT
AND ESCROW INSTRUCTIONS**

This Assignment and Assumption of Development Agreement and Assignment and Assumption of Purchase and Sale Agreement and Escrow Instructions with Seller's Consent (the "Assignment"), is entered into on this _____ day of January, 2022 (the "Effective Date"), by and between Copper Sky Commercial Mixed Use North, LLC, an Arizona limited liability company ("Assignor") and KOBA II Development, LLC, an Arizona limited liability company ("Assignee").

RECITALS

A. Assignor is a party to that certain Development Agreement by and between Assignor, the City of Maricopa, an Arizona municipal corporation, Copper Sky Commercial Senior Housing, LLC, an Arizona limited liability company, Copper Sky Commercial Mixed Use South, LLC, an Arizona limited liability company and Shea Connelly Development, LLC, an Arizona limited liability company, recording in the Official Records of Pinal County, on February 25, 2020 as Fee Number 2020-016962, as amended by the First Amendment recorded on December 21, 2020 as Fee Number 2020-133575, the Second Amendment recorded on May 11, 2021 as Fee Number 2021-059050, the third Amendment recorded on June 23, 2021 as Fee Number 2021-078979, and the Fourth Amendment recorded on January 25, 2022 as Fee Number 2022 - _____ (collectively, the "Development Agreement").

B. In connection with the Development Agreement, Assignor is also the Buyer under that certain Purchase and Sale Agreement and Escrow Instructions dated February 4, 2020, which was thereafter amended by the First Amendment dated November 17, 2020, by the Second Amendment dated June 15, 2020 and by Third Amendment dated January _____, 2022 (collectively, the "Sale Agreement"), by and between the City of Maricopa, an Arizona municipal corporation ("City" or "Seller"), and Assignor, respecting certain real property as more particularly described therein (the "Property").

C. Assignor desires to assign, transfer, give, and convey to Assignee, and Assignee desires to assume from Assignor, all of Assignor's rights, interests, duties, and obligations in, to and under the Development Agreement and Sale Agreement as of the Effective Date.

D. City hereby consents to, and approves of, the assignment of the Development Agreement and Sale Agreement from Assignor to Assignee.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee agree as follows:

AGREEMENT

1. Assignment of Rights; Assumption of Obligations. Assignor hereby assigns to Assignee all of Assignor's right, title and interest in, to and under the Development Agreement and Sale Agreement to the fullest extent assignable, and delegates to Assignee all of Assignor's duties, and obligations in, to and under the Development Agreement and Sale Agreement arising from and after the Effective Date. Assignee hereby accepts the foregoing assignment of the Development Agreement and Sale Agreement from Assignor and assumes all of the duties, and obligations of Assignor thereunder arising from and after the Effective Date including, but not limited to the development plan set forth in Section 3.2 of the Development Agreement. Assignee agrees to timely perform, fulfill and comply with all covenants and obligations to be performed, fulfilled or complied with or by Assignor under the Development Agreement and Sale Agreement arising from and after the Effective Date.

2. Indemnity. Assignor agrees to save, indemnify, defend and hold Assignee harmless from and on account of any claims, demands, actions, losses, expenses and liabilities (including attorneys' fees) of Assignee under the Development Agreement and/or Sale Agreement on account of or arising out of any obligations and liabilities of the Assignor thereunder, arising prior to the Effective Date hereof. Assignee agrees to save, indemnify, defend and hold Assignor harmless from and on account of any claims, demands, actions, losses, expenses and liabilities (including attorneys' fees) of Assignor under the Development Agreement and/or Sale Agreement on account of or arising out of any obligations and liabilities of Assignee thereunder, arising after the Effective Date hereof. Nothing in this Assignment shall be construed to supersede or release any other indemnification in favor of Assignor, Assignee or the City described in the Development Agreement and/or Sale Agreement, all of which shall survive.

3. Contingency. Notwithstanding anything to the contrary herein, this Assignment shall be contingent upon the receipt of the consent of City as evidenced by the execution by City of the consent set forth below. Assignor and Assignee represent to City that each has full power and authority to enter into and perform this Assignment in accordance with its terms and that the delivery and performance of this Assignment has been duly authorized by all necessary action.

4. Miscellaneous Provisions.

4.1. Binding Nature. This Assignment shall inure to the benefit of and be binding upon the parties and their respective heirs, personal representatives, successors and assigns. No person shall have a right or cause of action arising out of or resulting from this Assignment except the parties and their successors in interest.

4.2. Litigation. If any action is brought by either party in respect to their rights under this Assignment, the prevailing party shall be entitled to its reasonable attorneys' fees and court costs incurred, whether a lawsuit is instituted or not.

4.3. Invalidity of Portion. If any provision of this Assignment is declared void and unenforceable, such provision shall be deemed severed from the Assignment, and the

remaining provisions of the Assignment shall remain in full force and effect. Further, in the event any term or provision of this Assignment is declared to be invalid or illegal, such term or provision shall be reduced to the extent necessary to become enforceable, and shall be enforced as so reduced.

4.4. Entire Agreement. This Assignment, which shall include the Development Agreement and Sale Agreement, constitutes the entire agreement between the parties pertaining to the subject matter contained in this Assignment. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by and merged into this Assignment.

4.5. Modification. No supplement, modification or amendment of this Assignment shall be binding unless in writing and executed by the parties hereto.

4.6. Waiver. The waiver by any party hereto of any right granted to it hereunder shall not be deemed to be a waiver of any other right granted herein, nor shall same be deemed to be a waiver of subsequent rights obtained by reason of the continuation of any matter previously waived.

4.7. Counterparts. This Assignment may be executed in counterparts, each of which shall be determined an original and said counterparts shall constitute but one in the same instrument which may be sufficiently evidenced by one counterpart.

4.8. Governing Law; Venue. This Assignment shall be deemed to be made under, and shall be construed in accordance with and shall be governed by the laws of the State of Arizona. The parties agree that should any court action be commenced relating to this Assignment, that the Pinal County Superior Court shall be the appropriate and exclusive venue therefor.

4.9 Notices. Upon the execution of this Assignment and City's approval thereof, the address for notices to Assignee pursuant to the Development Agreement and Sale Agreement shall thereafter be as follows:


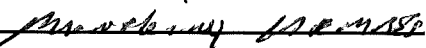
KOBA II Development, LLC
Attn: Bart Shea
2055 S. Cottonwood Drive
Tempe, AZ 85282

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have set their hands on the date first above written.


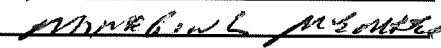
“ASSIGNEE”

KOBA II Development, LLC,
an Arizona limited liability company

By: 
Its: 

“ASSIGNOR”

Copper Sky Commercial Mixed Use North, LLC
an Arizona limited liability company

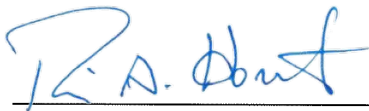
By: 
Its: 

CONSENT

The undersigned, as owner and holder of all right, title and interest of City under the Development Agreement and Sale Agreement hereby consents to the foregoing Assignment.

“SELLER”

CITY OF MARICOPA, an Arizona
municipal corporation

By: 
Ricky A. Horst, City Manager

Attest:

By: _____
Vanessa Bueras, MMC
City Clerk

Approved as to form:

By: _____
Denis M. Fitzgibbons
City Attorney