

## **ASSIGNMENT, ASSUMPTION AND THIRD AMENDMENT OF AGREEMENT**

This Assignment, Assumption and Third Amendment of Agreement (the “Assignment Agreement”) is made and entered into as of the 27th day of September, 2023 by and among VINEYARD II LLC, a Delaware limited liability company f/k/a IP VINEYARD LLC (“Assignor”), VINEYARD METROPOLITAN DISTRICT, a quasi-municipal corporation organized and existing in accordance with Title 32, Article 1, C.R.S. (the “District”), FALCON DATA CENTERS, LLC, an Alaska limited liability company (“Assignee”), and the COLORADO SPRINGS URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado (the “Authority”) (the Authority, the District, Assignor, and Assignee are also referred to herein collectively as the “Parties” or individually as a “Party”).

### **RECITALS**

WHEREAS, the Authority, Assignor (as assignee of Vineyard LLC) and the District are parties to that certain Vineyard Redevelopment and Reimbursement Agreement dated as of September 5, 2012 (as amended, the “Agreement”), as amended by a First Amendment to Vineyard Redevelopment and Reimbursement Agreement dated as of June 23, 2020 and a Second Amendment to Vineyard Redevelopment and Reimbursement Agreement dated as of September 23, 2021 (the “Second Amendment”), which Agreement describes the rights and obligations of the parties thereto with regard to the development and redevelopment of a portion of the property subject to the Urban Renewal Plan (as defined in the Agreement);

WHEREAS, Assignor, Vineyard LLC and Assignee are parties to a Purchase and Sale Agreement (the “PSA”) whereby Assignor and Vineyard LLC would sell, and Assignee would purchase, all of the real property owned by such selling entities within the Urban Renewal Plan, which consists of the IP Vineyard Property and the Vineyard Property (as each such term is defined in the PSA);

WHEREAS, in furtherance of the purposes of the Agreement, the Authority entered into (i) a Loan Agreement with Zions Bancorporation, N.A. dba Vectra Bank Colorado (“Lender”) dated as of June 23, 2020, as amended by a First Amendment to Loan Agreement dated as of April 27, 2021 and a Second Amendment to Loan Agreement dated as of September 23, 2021 (as amended, the “Loan Agreement”), (ii) a Custodial Agreement with Zions Bancorporation, National Association (“Custodian”) dated as of June 23, 2020, as amended by a First Amendment to Custodial Agreement dated as of April 27, 2021 and a Second Amendment to Custodial Agreement dated as of September 23, 2021 (as amended, the “Custodial Agreement”), and (iii) a 2020 Tax Exempt Note dated June 23, 2020 in the maximum principal amount of \$15,000,000 (the “Promissory Note,” and together with the Loan Agreement, the Custodial Agreement and the documents and instruments executed and delivered in connection therewith, the “Loan Documents”);

WHEREAS, the Loan (as defined in the Loan Agreement) benefits the Assignor and results in accelerated reimbursement of Assignor for the Eligible Costs under the Agreement, and, in connection with the Loan and the Loan Documents, Assignor agreed to subordinate its interest in the TIF Revenue and the Reimbursement Obligation to the terms and conditions of the Loan Documents;

WHEREAS, pursuant to the Second Amendment, among other things, the Assignor agreed to an updated schedule of performance for the development of the IP Vineyard Property and to the PILOT Covenant, and the Authority agreed to subordinate the payment of the Authority Administrative Fee to payment of the Loan, provided that the Assignor deposited \$60,000 as cash collateral for payment of the Authority Administrative Fee (the “Cash Collateral”);

WHEREAS, the Agreement provides that no rights or obligations of Assignor under the Agreement may be assigned or transferred without the prior written consent of the other parties to the Agreement, and as a condition to approval Assignee shall assume all of the obligations of Assignor and agree to be subject to the conditions and restrictions to which Assignor is subject;

WHEREAS, the Authority has determined that the assignment of rights and assumption of obligations as provided in this Assignment Agreement and approval by the Authority will result in accelerated development and redevelopment of the Property; and

WHEREAS, Assignor and Assignee have agreed to assign and assume, respectively, the rights and obligations of the Agreement and the Authority has approved such assignment, all on the terms and conditions stated herein;

## AGREEMENT

In consideration of the premises and the mutual obligations of the Parties and other good and valuable consideration, the Parties agree as follows.

1. Recitals. The Recitals to this Assignment Agreement are incorporated herein by this reference as though fully set forth in the body of this Assignment Agreement.

2. Definitions. Unless as otherwise stated herein, all capitalized terms shall have the meaning set forth in the Agreement.

3. Assignment of Rights and Assumption of Obligations. Subject to the terms and conditions of this Assignment Agreement, effective upon the closing of the transactions described in the PSA, Assignor hereby assigns to Assignee all of its right, title and interest to the Agreement and any and all rights to receive any and all TIF Revenue attributed to and collected from the Property, subject to the prior interests of the Lender and the Custodian under the Loan Documents. Assignee hereby accepts the Agreement and assumes the performance of all of the terms, covenants and conditions imposed upon Assignor under the Agreement whether accruing or arising before, on or after the date hereof. From and after the date of this Assignment Agreement, Assignee (a) will be a party to the Agreement and will have the rights and obligations as the Developer thereunder and (b) will be bound by all of the provisions of the Agreement applicable to the Developer thereunder. Assignee specifically further acknowledges that while the Agreement applies only to the development of the IP Vineyard Property, the Vineyard Property is also subject to the terms and conditions of the Urban Renewal Plan and the PILOT Covenant.

4. Approval by the Authority. Subject to the terms and conditions of this Assignment Agreement, the Authority consents, approves, ratifies, and confirms the assignment set forth in Section 3 of this Assignment Agreement and the transfer of the Property (as defined in the PSA) to Assignee. To the extent required, the District also consents to the assignment.

5. Schedule of Performance. Without limiting the provisions of paragraph 3 above, Assignee hereby agrees to develop Phase II of the IP Vineyard Property in accordance with the revised Schedule of Performance described on Exhibit A attached hereto and made a part of this Assignment Agreement. The Authority acknowledges that Assignor has received approval from the City of Colorado Springs of the development plan for Lot 1, T5 @ Colorado Springs Filing No. 3, File No. AR DP 21-00670. Assignee agrees to cooperate in good faith with the Authority to deliver a Schedule of Performance for subsequent phases of the development not later than December 31, 2023. Without limiting any requirements of the Agreement, the Schedule of Performance will include information regarding installation of Eligible Public Improvements and such other information as the Authority may reasonably request.

6. Payment of Cash Collateral. As a condition to the Authority's approval granted hereunder and to the effectiveness of this Assignment Agreement, Assignor shall provide the Cash Collateral as required by the Second Amendment, which shall be held in trust by the Authority subject to the terms and conditions of the Second Amendment, and will be returned to Assignor promptly upon satisfaction of the condition for release of the Amended and Restated PILOT (as defined below) in Section 7, provided that the payment of the Authority Administrative Fee is current through such date. Vince Colarelli joins this Assignment Agreement for purposes of acknowledging and ratifying his continuing personal liability for such obligation from and after the effectiveness of this Assignment Agreement.

7. PILOT Covenant. Prior to this Assignment Agreement, Assignor, Vineyard LLC and the District, with consent of the Authority, has entered into an Amended and Restated Declaration of Covenants dated as of December 23, 2021 and recorded in the real estate records of El Paso County, Colorado on January 11, 2022 at Reception No. 222005382 (the "Amended and Restated PILOT") to provide for, among other things, termination of the PILOT Covenant at such time as the second completed building is included in the assessed value of the Property, adding a minimum of \$1,372,892.99 of incremental assessed value, as described in the Second Amendment. Assignee acknowledges that it has reviewed the Amended and Restated PILOT and consents to the same for all purposes, and agrees that the Amended and Restated PILOT constitutes a "Permitted Exception" under the PSA. The Amended and Restated PILOT shall hereafter constitute the "PILOT Covenant" as defined in the Agreement.

8. Review Fee. Contemporaneously with the execution of this Assignment Agreement, Assignee will pay to the Authority a review fee in the amount of \$5,000.

9. Authorization. Each Party represents and warrants that the persons executing this Assignment Agreement on behalf of such Party respectively are duly authorized to bind such Party to this Assignment Agreement and the terms, conditions, and covenants herein contained.

10. Effect of Assignment. Except as specifically modified by this Assignment Agreement, the Agreement shall remain in full force and effect and fully binding on the Parties.

11. Binding Effect. This Assignment Agreement shall be binding on the Parties and inure to the benefit of the Parties and their respective permitted successors and assigns.

12. Further Assurances. The Parties agree to cooperate at all times from and after the date hereof with respect to all of the matters described herein, and to execute such further assignments, releases, assumptions, notifications and other documents as may be reasonably requested for the purpose of giving effect to, or evidencing or giving notice of, the transactions contemplated by this Assignment Agreement.

13. Counterparts. This Assignment Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The exchange of copies of this Assignment Agreement and of signature pages by facsimile transmission or by electronic transmission in Adobe Acrobat format shall constitute effective execution and delivery of this Assignment Agreement as to the parties and may be used in lieu of the original Assignment Agreement for all purposes.

14. Governing Law. This Assignment Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without giving effect to its conflict of laws provisions.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have duly executed this Assignment Agreement effective as of the day and year first above written.

Assignor:

Assignee:

VINEYARD II LLC, a Delaware limited liability company

FALCON DATA CENTERS, LLC, an Alaska limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

District:

Authority:

VINEYARD METROPOLITAN DISTRICT

COLORADO SPRINGS URBAN RENEWAL AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Maureen Juran, Chair

ATTEST:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

For purposes of paragraph 6:

\_\_\_\_\_  
Vince Colarelli

**EXHIBIT A**  
**PHASE II OF PRIVATE IMPROVEMENTS AND ELIGIBLE PUBLIC IMPROVEMENTS**  
September 27, 2023

|  |   |
|--|---|
| Development Plan for Next Building       | Approved November 9, 2022                     |
| Submittal of Building Permit Application | 1st Quarter 2024                              |
| Commencement of Construction             | Within 60 days of Building<br>Permit Issuance |