

After recording return to:

Holland & Hart LLP  
555 17th Street, Suite 3200  
Denver, Colorado 80202  
Attn: Craig Willis

### **Assignment and Assumption of Development Agreement Rights and Obligations**

This Assignment and Assumption of Development Agreement Rights and Obligations (this "**Assignment**") is made as of September \_\_\_\_, 2021 (the "**Effective Date**"), by and between Daybreak Recovery Acquisition LLC, a Delaware limited liability company ("**Assignor**"), and Boulder Creek Colliers LLC, a Colorado limited liability company ("**Assignee**").

#### **Recitals**

Pursuant to that certain Purchase and Sale Agreement, dated as of November 10, 2020, by and between Assignor and Assignee concerning the purchase and sale of certain real property described therein, and more fully described in Exhibit A, attached hereto (the "**Property**"), together with certain other real property as more particularly described in such Purchase and Sale Agreement, as amended, Assignor sold to Assignee and Assignee acquired from Assignor the Property on December 17, 2020.

In connection with Assignor obtaining from the Town of Erie, Colorado (the "**Town**"), certain entitlement approvals for the Property and certain other adjacent property, including final plats, Assignor and the Town entered into that certain Development Agreement (Colliers Hill Subdivision Filing No. 5), dated as of October 13, 2020, and recorded on October 30, 2020 as Document No. 4646042 in the real property records of the Weld County Clerk prior to this Assignment (as amended by that certain First Amendment to Development Agreements (Colliers Hill Subdivision Filing No. 4D and 5), dated March 9, 2021 and recorded on March 10, 2021 as Document No. 4691328 in the real property records of the Weld County Clerk, by and among the Town, Assignor and Colliers Hill Metropolitan District No. 2, the "**Development Agreement**").

In connection with the Assignee's acquisition of the Property, Assignor agreed to assign to Assignee all of Assignor's rights under the Development Agreement (the "**Assigned Rights**"), and Assignee agreed to assume all of the obligations of Assignor under the Development Agreement, whether express or implied (the "**Assumed Obligations**").

## **Agreement**

Now, therefore, in consideration of the Recitals and mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment and Assumption. Assignor hereby expressly transfers, conveys and assigns to Assignee, and Assignee hereby accepts from Assignor, the Assigned Rights. Additionally, Assignor hereby expressly transfers, conveys and assigns to Assignee, and Assignee hereby accepts from Assignor, the Assumed Obligations, and Assignee agrees to perform the Assumed Obligations. As additional consideration for the purchase and sale of the Property, Assignee hereby indemnifies and holds Assignor harmless from and against any and all claims, liens, damages, demands, causes of action, liabilities, lawsuits, judgments, losses, costs and expenses (including but not limited to attorneys' fees and expenses) actually asserted against or incurred by Assignor in connection with Assignee's failure to satisfy the Assigned Rights.

2. Intentionally Blank.

3. General Provisions.

(a) No Implied Waiver. No failure by either party to insist upon the strict performance of any provision contained in this Assignment shall constitute a waiver of any such provision.

(b) No Oral Amendment or Modifications. No amendments, waivers or modifications of the terms and provisions contained in this Assignment, and no approvals, consents or waivers by either party under this Assignment, shall be valid or binding unless in writing and executed by the party to be bound thereby. No such termination, extension, modification or amendment shall be effective unless and until a proper instrument in writing has been executed and recorded in the Records.

(c) Severability. If any provision of this Assignment shall be held invalid, illegal or unenforceable, it shall not affect or impair the validity, legality or enforceability of any other provision of this Assignment, and there shall be substituted for the affected provision a valid and enforceable provision as similar as possible to the affected provision.

(d) Binding Effect. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The provisions contained in this Assignment shall be construed as covenants running with the Property.

(e) Construction; Captions for Convenience. The parties acknowledge and agree that both they and their counsel have reviewed this Assignment, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Assignment. All

headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Assignment.

(f) Costs of Legal Proceedings. In the event either party institutes legal proceedings with respect to this Assignment, the prevailing party shall be entitled to recover, in addition to any other relief to which it is entitled, its costs and expenses incurred in connection with such legal proceedings, including, without limitation, reasonable attorneys' fees.

(g) No Third Party Beneficiaries. None of the terms, conditions or covenants contained in this Assignment shall be deemed to be for the benefit of any person other than Assignee, its successors and assigns specifically designated as such in writing, and no other person shall be entitled to rely hereon in any manner.

(h) Relationship of Parties. Nothing in this Assignment shall be construed or deemed to make or constitute the parties as partners, joint venturers or any other form of joint participants in the development of the Property.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**ASSIGNOR:**

Daybreak Recovery Acquisition LLC,  
a Delaware limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ASSIGNEE:**

Boulder Creek Colliers LLC,  
a Colorado limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_



STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Daybreak Recovery Acquisition LLC, a Delaware limited liability company.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## **Exhibit A**

### **Legal Description**

Lots 1-9, inclusive, of Block 1;  
Lots 1-6, inclusive, of Block 2;  
Lots 1-21, inclusive, of Block 3;  
Lots 1-4, inclusive, of Block 4;  
Lots 1-6, inclusive, of Block 5;  
Lots 1-3, inclusive, of Block 6; and  
Lots 1-4, inclusive, of Block 7

Colliers Hill Filing No. 5, Town of Erie, County of Weld