

Consent to Assignment

Colliers Hill Filing No. 5 Development Agreement

This Consent to Assignment (the "**Consent**"), dated as of September ___, 2021 (the "**Effective Date**"), is entered into by and among the Town of Erie, Colorado, a Colorado municipal corporation (the "**Town**"), Daybreak Recovery Acquisition LLC, a Delaware limited liability company ("**Owner**") and Boulder Creek Colliers LLC, a Colorado limited liability company ("**Assignee**") (each a "**Party**" and collectively the "**Parties**").

Whereas, the Town and Owner 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 and Recorder (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**");

Whereas, the Development Agreement contains certain improvement obligations, covenants, promises, and requirements to be fulfilled by Owner;

Whereas, Owner desires to assign all of its rights, improvement obligations, covenants, promises, and requirements under and pursuant to the Development Agreement to Assignee, and, in accordance with the requirements of the Development Agreement has requested the Town's consent to such assignment;

Whereas, Assignee has agreed to be responsible for all of the improvement obligations, covenants, promises, and requirements under and pursuant to the Development Agreement, and agrees to be bound by the terms of the Development Agreement;

Whereas, Owner and Assignee have presented to the Town an assignment document wherein Owner has assigned all of its rights and duties to Assignee and Assignee has accepted such assignment, and which document sets forth the delegation of the improvement obligations, covenants, promises and requirements as required by the Development Agreement.

Now, therefore, in consideration of the mutual promises, covenants and obligations of the Parties contained herein, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Attachment of Assignment. A copy of the fully executed assignment and acceptance of assignment entered into between Owner and Assignee is attached to this Consent, marked Exhibit "A," and incorporated herein by this reference.

2. Consent to Assignment. The Town hereby consents to the assignment of all of Owner's improvement obligations, covenants, promises and requirements under and pursuant to the Development Agreement to Assignee, as specifically set forth in Exhibit "A," subject to the following condition: no Improvement Guarantee as required by the Development Agreement shall be released either in whole or in part by the Town until the Town receives a replacement Improvement Guarantee of equal or greater value, in form and amount acceptable to the Town.

3. Assignee's Obligations. Assignee hereby agrees to be bound by all terms of the Development Agreement. Assignee hereby accepts each and every provision of the Development Agreement and Assignee forever waives any right to challenge the enforceability of the Development Agreement.

Assignee acknowledges and reaffirms each of the obligations, covenants, promises and requirements of Owner to be fulfilled as set forth in the Development Agreement.

[Signature Page Follows]

In witness whereof, the Parties have executed this Town of Erie Consent to Assignment as of the date first above written.

Town of Erie, Colorado

Jennifer Carroll, Mayor

Attest:

Heidi Leatherwood, Town Clerk

Owner:

Daybreak Recovery Acquisition LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

State of _____)
) ss.
County of _____)

The foregoing instrument was subscribed, sworn to, and acknowledged before me
this ____ day of _____, 2021, by _____ as the
_____ of Daybreak Recovery Acquisition LLC.

My commission expires:

(S E A L)

Notary Public

Assignee:

Boulder Creek Colliers LLC,
a Colorado limited liability company

By: _____
Name: _____
Title: _____

State of Colorado)
) ss.
County of _____)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this ____ day of _____, 2021, by _____ as the _____ of Boulder Creek Colliers LLC, a Colorado limited liability company.

My commission expires:

(S E A L)

Notary Public

Exhibit "A"

[Executed Assignment between Owner and Assignee]

[Attached]

Exhibit "B"

[Property]

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