

Consent to Assignment

Colliers Hill Filing No. 4I Development Agreement

This Consent to Assignment (the "**Consent**"), dated as of _____, 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 TRG Colliers Hill CO LLC, a Delaware limited liability company (and/or its successors or assigns) ("**Assignee**") (each a "Party" and collectively the "Parties").

Whereas, the Town and Owner have entered into the Colliers Hill Filing No. 4I Development Agreement, dated as of [REDACTED], which will be recorded in the real property records of the Weld County Clerk and Recorder (the "**Development Agreement**");

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

Whereas, Assignee and Owner have entered into a Purchase and Sale Agreement dated October 4, 2019 (the "**Purchase Agreement**") regarding Tract 11, Bridgewater Master Subdivision (the "**Property**") whereby Owner agreed to sell, and Assignee agreed to purchase the Property;

Whereas, upon the completion of purchase of the Property by Assignee as evidenced by deed recording the conveyance, 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, following conveyance of the Property to Assignee, 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 will assign all of its rights and duties to Assignee and Assignee will accept such assignment, and which document sets forth the delegation of the improvement obligations, covenants, promises and requirements as required by the Development Agreement (the "**D.A. Assignment**")

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 D.A. Assignment 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, upon conveyance of the Property from Owner 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. Upon conveyance of the Property from Owner to Assignee and subsequent execution of the D.A. Assignment, Assignee agrees to be bound by all terms and provisions of the Development Agreement and 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: [Signature]

Name: Jon Shumaker

Title: Authorized Signatory

State of NEW YORK)
Colorado) ss.
County of NEW YORK)

The foregoing instrument was subscribed, sworn to, and acknowledged before me
this 1st day of September, 2021, by Jon Shumaker as the
Authorized Signatory of Daybreak Recovery Acquisition LLC.

My commission expires:

(SEAL)

[Signature]
Notary Public



Assignee:

TRG Colliers Hill CO LLC,
a Delaware 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 TRG Colliers Hill CO LLC.

My commission expires:

(S E A L)

Notary Public

Exhibit A

[Draft Assignment between Owner and Assignee]

[To Be Attached]

After recording return to:

Stapp Law Firm
3839 McKinney Avenue, Ste 155-613
Dallas, TX 75204
Attn: Shannon Stapp

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 _____, 2021 (the “Effective Date”), by and between DAYBREAK RECOVERY ACQUISITION LLC, a Delaware limited liability company (“Assignor”), and TRG COLLIERS HILL CO LLC, a Delaware limited liability company, and/or its successors or assigns (“Assignee”).

Recitals

Pursuant to that certain Purchase and Sale Agreement, dated as of October 4, 2019, 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 the Effective Date.

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 Colliers Hill Filing 4I Development Agreement, dated [REDACTED], which agreement was recorded in the real property records of the Weld County Clerk prior to this Assignment (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. 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 Assignment 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:

TRG Colliers Hill CO LLC,
a Delaware corporation

By: _____

Name: _____

Title: _____

State of Colorado)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____ 202__,
by _____, as _____ of Daybreak Recovery Acquisition
LLC, a Delaware limited liability company.

Witness my hand and official seal.

Notary Public

My Commission Expires: _____

State of Colorado)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____ 202__, by _____, as _____ of TRG Colliers Hill CO LLC, a Delaware limited liability company.

Witness my hand and official seal.

My Commission Expires: _____
Notary Public _____

Exhibit A

Legal Description

Lot 1, Colliers Hill Filing No. 4I
Town of Erie. County of Weld. State of Colorado.

Exhibit B
Development Agreement
[attached hereto]