

## **ASSIGNMENT AND ASSUMPTION AGREEMENT**

(391 N. 1<sup>st</sup> Avenue, Ketchum, Idaho)

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “**Assignment Agreement**”), is made, executed and delivered effective as of April \_\_, 2021 (the “**Effective Date**”), by and between Main Drive Properties, LLC, a Tennessee limited liability company and Jack E. Bariteau, Jr. as Trustee of the Jack E. Bariteau Jr. Separate Property Trust, dated October 2, 1996, David Soares, as Trustee of the Starbody Trust, Erik W. Doyle, as Trustee of the Doyle Family 1999 Trust and Roger Armstrong (collectively “**Assignor**”), and Waypoint Pearl, LLC, an Idaho limited liability company (“**Assignee**”), with respect to the sale, conveyance, transfer and assignment by Assignor and the assumption by Assignee of Assignor’s right, title, estate and interests as the Owner in the Entitlements for the Project to be developed on the Property described as 391 N. 1<sup>st</sup> Avenue, Ketchum, Idaho as further described in the following:

Development Agreement #20427 dated December 16, 2019 and recorded in Blaine County, Idaho as Instrument Number 665841, as amended by First Amendment to Development Agreement #20427, dated January 19, 2021 and recorded in Blaine County, Idaho as Instrument Number 679218 (“**Development Agreement**”), under and by virtue of which Assignor has the right to develop the real property described as 391 N. 1<sup>st</sup> Street, Ketchum, Idaho (“**Property**”).

Right-of-Way Encroachment Agreement #20548 dated October 19, 2021 and recorded in Blaine County, Idaho as Instrument Number 675091 (“**Encroachment Agreement**,” and together with the Development Agreement the “**Contracts**”) under and by virtue of which Assignor has rights to construct certain improvements in the public rights-of-way adjacent to and abutting the Property.

All intangible rights in connection with the Property and Contracts, including but not limited to rights related to trade names, easements, licenses, permits, air rights, certificates of occupancy, entitlements, approvals, use agreements, reimbursement agreements, credits, development credits, development rights, rights of way, agreements pertaining to utilities, water and mineral rights, unpaid insurance claims or proceeds or awards for damages to the Property resulting from any casualty or any taking in eminent domain, indemnities, express and implied warranties, including those relating to construction of improvements on the Property and to fixtures, appliances and equipment located on the Property (“**Intangibles**”).

By this Assignment Agreement, Assignee and Assignor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do hereby agree as follows:

### **1. Definitions.**

Capitalized terms not specifically defined herein shall have the meanings ascribed thereto in the Contribution Agreement made and entered into by and between the Assignors, dated March 18, 2021 (“**Contribution Agreement**”).

### **2. Assignment and Assumption.**

Assignor hereby assigns, grants, bargains, sells, transfers and conveys to Assignee the Development Agreement, Encroachment Agreement and Intangibles, and Assignee hereby accepts such transfer, conveyance and assignment, and assumes and shall perform and carry out,

effective as of the Effective Date, all of the interests, rights, duties and obligations of Assignor which are contained in or which pertain to the Contracts, the Intangibles or the Property. Assignee further agrees to defend, indemnify and hold Assignor harmless from and against any loss, liability, claim or expense arising under or by virtue of the Contracts, Intangibles and the Property following the Effective Date.

### **3. Release.**

Effective as of the Effective Date, except as provided in the Contribution Agreement, Assignor and Assignee agree to and hereby do release and forever discharge each other from any and all claims, causes of action, damages, injuries, obligations, debts, demands or liabilities of any nature whatsoever, whether accrued or unaccrued, known or unknown, which they may have against the other as of the date of this Assignment Agreement.

### **4. Representations and Warranties.**

Assignor hereby represents and warrants to Assignee: (a) Assignor is the owner of all right, title, estate and interest in the Contracts and Intangibles and is a duly formed and existing limited liability company under the laws of the state of Idaho, (b) Assignor has the full legal right and authority to execute and fully perform its obligations under this Assignment Agreement pursuant to its governing documents, without the need for any further action, (c) the persons executing this Assignment Agreement and other documents required hereunder on behalf of Assignor are the duly authorized agents of the Assignor and are authorized to do so, (d) Assignor has not made any prior assignment or conveyance of any right, title, estate or interest in the Contracts, Intangibles, or the Property, except to Assignee, (e) Assignor is not the subject of any legal proceeding or government investigation that would affect its ability to perform its obligations under this Assignment Agreement, (f) no joinder, consent or waiver of or by any third person is necessary to permit the consummation by Assignor of the transaction contemplated by this Assignment Agreement, and (g) to the best of Assignor's knowledge there has been no breach or default of the Contracts by any party thereto.

### **5. Indemnification.**

Assignor agrees to defend, indemnify and hold Assignee harmless from and against any loss, liability, claim, demand, cause of action, damage, cost or expense (including attorneys' fees and costs) arising directly or indirectly out of any breach of this Assignment Agreement or of a representation or warranty contained herein.

### **6. Miscellaneous.**

A. Further Assurances. Each party hereby covenants and agrees, each at its own expense, to perform all such further acts and deliver all such further agreements, instruments and other documents as the other party shall reasonably request to evidence more effectively the assignments and assumptions made by Assignor and Assignee under this Assignment Agreement.

B. Disclaimer. All rights and interests created by this Assignment Agreement are exclusive to the parties hereto, their successors and assigns. No right, title,

interest or cause of action is created for or inures to the benefit of any other person or entity hereunder.

C. Notices. All notices or other communications or deliveries provided for under this Assignment Agreement shall be given as provided in the Contract.

D. Successors in Interest. This instrument and all the provisions hereof shall be binding on, and inure to the benefit of, the successors and assigns of the parties hereto permitted pursuant to the Contract.

E. Governing Law. This instrument shall be interpreted, construed and governed according to the laws of the state of Idaho (excluding any conflicts-of-law rule or principle of Idaho law that might refer to the governance, construction or interpretation of this Assignment Agreement to the laws of another state).

[signatures appear on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment Agreement effective as of the Effective Date first mentioned above.

**ASSIGNOR:**

The Jack E. Bariteau, Jr. Separate  
Property Trust

By: \_\_\_\_\_  
Jack E. Bariteau, Jr.  
Its: Trustee

Main Drive Properties, LLC, a  
Tennessee limited liability company

By: \_\_\_\_\_  
William A. Allison  
Title: Its Managing Member

Starbody Trust

By: \_\_\_\_\_  
David Soares  
Its: Trustee

Doyle Family 1999 Trust

By: \_\_\_\_\_  
Erik W. Doyle  
Its: Trustee

\_\_\_\_\_  
Roger Armstrong

**ASSIGNEE:**

Waypoint Pearl, LLC, an Idaho limited  
liability company

By: \_\_\_\_\_  
Jack E. Bariteau, Jr.  
Title: Its Managing Member

## CONSENT

Date: \_\_\_\_\_, 2021

**TO:** Waypoint Pearl, LLC (“**Assignee**”) and Dudley Family Investments, LLC

**RE:** Assignment and Assumption Agreement (“**Agreement**”) dated \_\_\_\_\_, 2021 made by and between Main Drive Properties, LLC, a Tennessee limited liability company, Jack E. Bariteau, Jr. as Trustee of the Jack E. Bariteau, Jr. Separate Property Trust, David Soares, as Trustee of the Starbody Trust, Erik Doyle, as trustee of the Doyle Family Trust, and Roger Armstrong (“**Assignor**”) and Waypoint Pearl, LLC, an Idaho limited liability company (“**Assignee**”).

The undersigned on behalf of the City of Ketchum, Idaho (“**City**”) hereby certifies, as of the date hereof, to Assignee as follows:

The Contracts as defined in the Agreement are unmodified and in full force and effect. Attached hereto as **Exhibit A** are true, correct and complete copies of the Contracts, and any and all amendments thereto. The Contracts constitute the entire agreement between the parties thereto with respect to the subject matter thereof and the Contracts have not been modified, amended or supplemented in any way except by the amendments or other agreements included in **Exhibit A**. City is not, and, to City’s actual knowledge, Assignor is not, as of the date of this Consent, in default under any provisions of the Contracts. The City has not assigned, transferred or hypothecated the Contracts or any interest therein.

The Property and Project which are the subject of the Contracts complies with all applicable zoning, building and subdivision laws, and all entitlements required to build the project are in place or available upon satisfaction of the conditions set forth in Section 11 of the Development Agreement.

City hereby consents to the assignment by Assignor of all of Assignor’s right, title and interest in and to the Contracts and Intangibles to Assignee.

City acknowledges and agrees that the statements set forth herein shall be binding and may be relied upon by the Assignee.

IN WITNESS WHEREOF, on the day and year first above written, the undersigned intending to be legally bound, has caused this Consent and Estoppel to be duly executed and delivered for the uses and purposes herein contained.

City of Ketchum, Idaho, a municipal corporation

By: \_\_\_\_\_  
Name: Neil Bradshaw  
Title: Mayor