

WHITE PETERSON

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April 15, 2021

To: Mayor and Council

From: Matthew Johnson, City Attorney

Recommendation to approve City Consent to Assignment and Assumption Agreement, 391 N. 1st Avenue.

Background and Recommendation:

The development project at 391 N. 1st Avenue is subject to Development Agreement #20427 and certain other associated entitlements referenced in that Development Agreement. The Development Agreement, Provision 16(h) provides as follows:

h) Successors and Assigns; Covenant Running With the Land. This Agreement shall inure to the benefit of City and Owner and their respective heirs, successors and assigns. This Agreement, including all covenants, terms, and conditions set forth herein, shall be and is hereby declared a covenant running with the land with regard to the Property or any portion thereof, and is binding on both parties to this Agreement as well as their respective heirs, successors and assigns. City acknowledges and agrees Owner may assign its rights hereunder to a new entity formed for the purpose of developing the Property or to a lender providing a construction or permanent loan, or both.

The Owner has determined to assign the development rights and associated entitlements to a new entity for the purpose of developing the Property: Waypoint Pearl, LLC. This is a fairly standard practice in project development. The parties have presented the City with an Assignment and Assumption Agreement, which includes a Consent portion for the City to consent to such assignment.

As City Attorney, I have reviewed the attached Assignment and Assumption Agreement, and find it to be in order. I recommend approval of consent on the assignment as allowed for by the Development Agreement.

Recommended Motion: I move to approve the City's Consent to the referenced Assignment and Assumption Agreement, as presented by staff, and authorize the Mayor to sign.

Financial Impact: None

Attachment: Assignment and Assumption Agreement (391 1st Avenue, Ketchum, Idaho)