

First American Title Insurance Company
National Commercial Services
250 W. Pratt Street, Suite 650
Baltimore, MD 21201
ATTN: Bethany Flanders, Esquire
File No. 1069498

c/o Tesla, Inc.
Real Estate Legal/Lease Administration
901 Page Avenue
Fremont, CA 95438
Attn: leaseadmin@tesla.com

ENT 108761:2022 PG 1 of 10
Andrea Allen
Utah County Recorder
2022 Oct 11 11:55 AM FEE 40.00 BY CS
RECORDED FOR First American Title Insurance Company
ELECTRONICALLY RECORDED

NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT (this "Agreement") is made and entered into as of this 16th day of June 2022, by and among INDEPENDENT BANK, a Texas state bank association ("Lender"), Tesla Motors UT, Inc., a Utah corporation ("Tenant") and DRAKE MOTOR PARTNERS SLC LLC, a Colorado limited liability company ("Landlord").

RECITALS

A. Lender is the holder of a certain note (the "Note") and Lender under a Deed of Trust (the "Deed") dated January 21st, 2022, in which Landlord is named as the grantor, which Deed was recorded on January 28th, 2022, in the Official Records of Utah County, State of Utah as Document No. 12481 : 2022. The Deed covers certain real property together with all appurtenances thereto and improvements thereon (the "Property") all as more particularly described in **Exhibit A** attached hereto and made a part hereof and which Property is commonly known as 2265 West 700 South, in the City of Pleasant Grove, County of Utah, State of Utah.

B. Landlord is the owner in fee simple of the Property and is the current obligor under the Note.

C. By Lease dated December 14th, 2021, and amendment by that certain First Amendment to Lease dated May 27th, 2022 (collectively the "Lease"), Landlord leased to Tenant those certain premises (the "Premises") which constitutes or forms all or a portion of the Property covered by the Deed and commonly known as 2265 West 700 South Pleasant Grove, Utah, all as more particularly described in said Lease.

D. The Lease is or is required by the Lease to become (subject to this Agreement) subordinate in priority to the Deed.

E. Tenant wishes to obtain from Lender certain assurances that Tenant's possession of the Premises will not (subject to this Agreement) be disturbed by reason of the enforcement of the Deed covering the Premises or a foreclosure of the lien thereunder.

F. Lender is willing to provide such assurances to Tenant upon and subject to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above, the reciprocal promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do mutually agree as follows:

1. Ratification. The Lease now is or shall become upon the mutual execution of this Agreement subordinate in all respects to the Deed and to all renewals, modifications and extensions thereof, subject to the terms and conditions of this Agreement. Tenant hereby affirms that the Lease is in full force and effect and that the Lease has not been modified or amended except for [none]. Lender acknowledges receipt of a copy of the Lease and hereby approves the same.

2. Landlord's Default. From and after the date Tenant receives a fully executed copy of this Agreement, Tenant will not seek to terminate the Lease by reason of any act or omission that constitutes (or would over time constitute) a default of Landlord until Tenant shall have given written notice of such act or omission to Lender (at Lender's last address furnished to Tenant) and until a period of thirty (30) days shall have elapsed, Lender shall have the right, but not the obligation, to remedy such act or omission, provided however that if the act or omission does not involve the payment of money from Landlord to Tenant and (i) is of such a nature that it could not be reasonably remedied within the thirty (30) day period aforesaid, or (ii) the nature of the act or omission or the requirements of local law require Lender to appoint a receiver or to foreclose on or commence legal proceedings to recover possession of the Property in order to effect such remedy and such legal proceedings and consequent remedy cannot reasonably be achieved within said thirty (30) days, then Lender shall have such further time as is reasonable under the circumstances to effect such remedy provided that Lender shall notify Tenant, within ten (10) days after receipt of Tenant's notice, of Lender's intention to effect such remedy and provided further that Lender institutes immediate legal proceedings to appoint a receiver for the Property or to foreclose on or recover possession of the Property within said thirty (30) day period and thereafter prosecutes said proceedings and remedy with due diligence and continuity to completion. Notwithstanding the foregoing, Lender shall have no rights under this Section 2 if Lender is an entity that controls, is controlled by, or is under common control with Landlord.

3. Non-Disturbance and Attornment. So long as Tenant is not in default under the Lease (beyond any period given Tenant to cure such default) as would entitle Landlord to terminate the Lease or would cause, without any further action of Landlord, the termination of the Lease or would entitle Landlord to dispossess Tenant thereunder, Lender will not disturb the peaceful and quiet possession or right of possession of the Premises by Tenant nor shall the Lease or its appurtenances be extinguished by reason of any Foreclosure (as hereinafter defined) or otherwise, nor join Tenant as a party in any action or proceeding brought pursuant to the Deed.

In the event that Lender or its successors or assigns ("Successor Landlord") acquires the interest of Landlord or comes into the possession of or acquires title to the Premises (the

“Succession”) by reason of the foreclosure (judicial or non-judicial) or enforcement of the Deed (including a private power of sale) or the Note or obligations secured thereby or by a conveyance in lieu thereof or other conveyance or as a result of any other means (any or all of the foregoing hereinafter referred to as a “Foreclosure”), then the Lease and all appurtenances thereto shall remain in full force and effect and Tenant shall be bound to Successor Landlord under all of the provisions of the Lease for the balance of the term thereof (including any extensions or renewals thereof which may be effected in accordance with any options contained in the Lease) with the same force and effect as if Successor Landlord was Landlord under the Lease, and Tenant shall attorn to Successor Landlord as its landlord, such attornment to be effective and self-operative, without the execution of any further instruments on the part of either of the parties hereto, immediately upon the Succession; and further, in such event, Successor Landlord shall be bound to Tenant under all of the provisions of the Lease, and Tenant shall, from and after such Succession, have the same remedies against Successor Landlord for the breach of any agreement contained in the Lease that Tenant might have had under the Lease against Landlord thereunder, provided, however, that if Successor Landlord is not an entity that controls, is controlled by, or is under common control with Landlord, then Successor Landlord shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord) unless Tenant shall have given notice (pursuant to Paragraph 2 hereof) of such act or omission to the party who was the then holder of the Deed (whether or not such holder elected to cure or remedy such act or omission); or

(b) subject to any offsets (except those expressly permitted under the Lease) or defenses which Tenant might have against any prior landlord (including Landlord) unless Tenant shall have given notice (pursuant to Paragraph 2 hereof) of the state of facts or circumstances under which such offset or defense arose to the party who was the then holder of the Deed (whether or not such holder elected to cure or remedy such condition); or

(c) bound by any rent or additional rent which Tenant might have paid to any prior landlord (including Landlord) more than thirty (30) days in advance of the due date under the Lease; or

(d) bound by any security deposit which Tenant may have paid to any prior landlord (including Landlord), unless such deposit is available to the party who was the holder of the Deed at the time of a Foreclosure.

Tenant shall be under no obligation to pay rent to Lender or Successor Landlord until Tenant receives written notice from Lender or Successor Landlord stating that Lender or Successor Landlord is entitled to receive the rents under the Lease directly from Tenant. Landlord, by its execution hereof, hereby authorizes Tenant to accept such direction from Lender or Successor Landlord and to pay the rents directly to Lender or Successor Landlord and waives all claims against Tenant for any sums so paid at Lender’s or Successor Landlord’s direction. Tenant may conclusively rely upon any written notice Tenant receives from Lender or Successor Landlord notwithstanding any claims by Landlord contesting the validity of any term or condition of such notice, including any default claimed by Lender or Successor Landlord, and Tenant shall have no duty to inquire into the validity or appropriateness of any such notice.

4. Notices of Default/Tenant's Right to Cure. Lender hereby agrees to give to Tenant a copy of each notice of a failure on the part of the grantor or obligor under the Deed or Note to perform or observe any of the covenants, conditions or agreements of such Deed or Note at the same time as whenever any such notice shall be given to the said grantor or obligor, such copy to be sent as provided in Paragraph 6 herein. Further, Lender shall accept the cure by Tenant of any default, which cure shall be made within ten (10) days in the case of monetary defaults of Landlord and within thirty (30) days in the case of non-monetary defaults following Tenant's receipt of such notice provided however that (i) if the failure of performance does not involve the payment of money from Landlord to Tenant, and (ii) is of such a nature that it could not be reasonably remedied within the thirty (30) day period aforesaid, then Tenant shall have such further time as is reasonable under the circumstances to effect such remedy provided that Tenant shall notify Lender, within ten (10) days after receipt of Lender's notice, of Tenant's intention to effect such remedy and provided further that Tenant institutes steps to effect such remedy within said thirty (30) day period and thereafter prosecutes said remedy with due diligence and continuity to completion. Lender agrees that it will accept such performance by Tenant of any covenant, condition or agreement to be performed by grantor or obligor under the Deed or Note with the same force and effect as though performed by such grantor or obligor. The provisions of this Paragraph 4 are intended to confer additional rights upon Tenant and shall not be construed as obligating Tenant to cure any default of any such grantor or obligor.

5. Agreement to Release Proceeds or Awards.

- (a) **Destruction.** In the event of a casualty at the Premises, Lender shall release its interest in any insurance proceeds applicable to the nonstructural improvements installed by Tenant. Lender acknowledges that it has no interest and waives any interest in Tenant's personal property, Tenant's signs, the Antenna (if any), the Solar installation (if any) or the Superchargers (if any), and any safety systems (such as, without limitation, fire and security monitoring and alarm systems) installed at or about the Premises, or any insurance proceeds are payable with respect thereto under either Landlord's or Tenant's policies.
- (b) **Eminent Domain.** In the event of a public taking or act of eminent domain, Lender shall release its interest in that portion of the award to which Tenant is entitled pursuant to the Lease, as well as its interest in so much of the award applicable to the Improvements installed by Tenant as shall be necessary for the purposes of restoration, consistent with Landlord's and Tenant's rights and obligations under the Lease.

6. Super Chargers or Solar Equipment.

Lender acknowledges that Tenant has constructed, is constructing or may construct a Supercharging Station for electric vehicles or may install Solar Equipment on the Property which Supercharging Station or Solar Equipment and any and all infrastructure, equipment and trade fixtures associated therewith will remain the property of Tenant at the expiration or earlier termination of the Lease and Lender acknowledges that it has no interest and waives any interest in Tenant's Supercharging Station or Solar Equipment. Lender waives any right to request or

accept payment from Tenant's customers or any other third parties in connection with the Supercharger Station.

7. **Notices.** In order to be effective, any notice to be given under this Agreement must be in writing and sent by registered or certified U.S. mail, Federal Express or a similar reputable express courier to the following applicable notice address, provided that proof of delivery thereof can be produced.

To Lender: Independent Bank
 3301 East First Avenue
 Denver, CO 80206
 Attention: Matt Winter
 Telephone: (303) 293-5516
 email: Matt.Winter@ibtx.com

To Tenant: c/o Tesla Motors UT, Inc.
 901 Page Ave.
 Fremont, CA 94538
 Attention: Real Estate Legal/Lease Administration
 email: leaseadmin@tesla.com

To Landlord: Drake Motor Partners SLC LLC
 496 South Broadway
 Denver, CO 80209
 Attention: Jon Hauser
 Telephone: (303) 825-6200
 email: hauser@drakeres.com

No notice to Tenant shall be effective unless it is addressed to the attention of Real Estate Legal/Lease Administration (for all notices, including notices of default, other than invoices) and as otherwise set forth above. No notice delivered to the Premises shall be effective. The telephone numbers identified above are for informational purposes only and not for purposes of giving notice under this Agreement. Any party may change the address or email by written notice to the other parties clearly stating such party's intent to change the address or email for all purposes of this Agreement, which new address or email shall be effective one (1) week after receipt. Except as hereinafter provided, notice shall be deemed given when received or when receipt is refused.

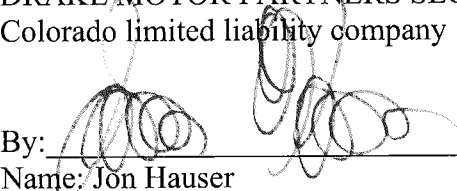
8. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective personal representatives, successors and assigns it being understood that the obligations herein of Lender shall extend to it in its capacity as Lender under the Deed and to its successors and assigns, including anyone who shall have succeeded to its interest or to Landlord's interest in the Premises or acquired possession thereof by Foreclosure or otherwise.

9. **Effectiveness of Agreement.** If, within three (3) weeks of Tenant's execution of this Agreement, Tenant has not received one (1) electronic version (such as pdf) or one (1) original of the fully executed Agreement at the notice address listed above, this Agreement shall, at Tenant's option, be null and void.

{SIGNATURE PAGES FOLLOW}

LANDLORD

DRAKE MOTOR PARTNERS SLC LLC, a Colorado limited liability company

By: 
Name: Jon Hauser
Title: Manager

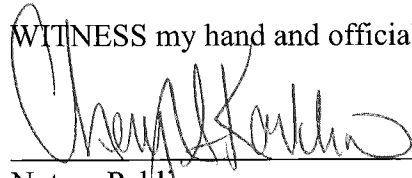
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF COLORADO)
) ss.
CITY & COUNTY OF DENVER)

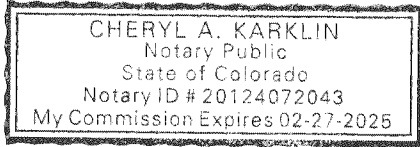
On June 13th, 2022, before me, CHERYL A. KARKLIN,
a Notary Public, personally appeared JON HAUSER as General Manager of Drake Real Estate Services, Inc., a Colorado corporation, as Manager of Drake Development LLC, a Colorado limited liability company, as Manager of DRAKE MOTOR PARTNERS SLC LLC, a Colorado limited liability company, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity(ies), and that by his signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Colorado that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public



Commission Expiration Date 2/27/2025

EXHIBIT A

DESCRIPTION OF PROPERTY**Valley Grove Business Park Plat "O" – Lot 31**

Beginning at a point on the westerly boundary line of the Grove Creek Center Commercial Subdivision Plat 'B', said point being North 89°37'36" East 451.73 feet along the section line, South 35.93 feet and South 00°19'53" West 591.88 feet from the West Quarter Corner of Section 30, Township 5 South, Range 2 East, Salt Lake Base and Meridian; and running

thence South 00°19'53" West 382.95 feet said westerly boundary line and its extension;
thence North 89°40'07" West 218.48 feet to the Northerly Right-of-Way Line of

Interstate 15;

thence along said Northerly Right-of-Way Line the following two (2) courses:

(1) Northwesterly 80.17 feet along the arc of a 3,445.69 foot radius curve to the right (center bears North 38°33'12" East and the chord bears North 50°46'48" West 80.17 feet with a central angle of 01°19'59");

thence North 49°51'00" West 340.46 feet;

thence North 114.60 feet;

thence South 89°40'07" East 543.05 feet to the point of beginning.

Contains 164,518 Square Feet or 3.777 Acres