

RECORDATION REQUESTED BY:

Marci Morgan Cox, Esq.
Dinsmore & Shohl, LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

WHEN RECORDED MAIL TO:

Marci Morgan Cox, Esq.
Dinsmore & Shohl, LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

Tax Parcel 37-365-0001

CTIA 176124-DMP

Loan No. L2400700

**ABSOLUTE ASSIGNMENT OF RENTS AND PROFITS
AND COLLATERAL ASSIGNMENT OF LEASES**

THIS ABSOLUTE ASSIGNMENT OF RENTS AND PROFITS AND COLLATERAL ASSIGNMENT OF LEASES (this “**Assignment**”) is dated as of April 30, 2024 and is by and between **DEER PARK 1, LLC**, a Utah limited liability company (“**Borrower**”) and **THE LINCOLN NATIONAL LIFE INSURANCE COMPANY**, an Indiana corporation (“**Lender**”).

RECITALS

Borrower is the owner in fee simple of that certain parcel of real property and all improvements thereon situated in American Fork, Utah County, Utah, more particularly described in Exhibit A attached hereto and by this reference incorporated herein (said land together with all rights and appurtenances thereto and all improvements presently located or hereafter constructed thereon being collectively referred to as the “**Property**”).

Simultaneously with the execution and delivery of this Assignment, Lender has loaned to Borrower the principal sum of TWELVE MILLION AND NO/100 U.S. DOLLARS (\$12,000,000.00) (the “**Loan**”), which loan is evidenced by that certain Promissory Note dated as of the date hereof, executed by Borrower in favor of Lender (said note and any and all renewals, replacements, modifications and extensions thereof are collectively referred to as the “**Note**”) and which Loan is governed by that certain Loan Agreement of even date herewith, executed by and between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”). Any term not otherwise defined herein shall have the meaning ascribed to such term in the Loan Agreement.

Simultaneously with the execution and delivery of this Assignment, Borrower has executed and delivered a Trust Deed, Security Agreement and Fixture Filing, dated as of the date hereof (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Security Instrument**”) as security for the debt as evidenced by the Note.

Borrower has entered into certain leases reflected on the Rent Roll (as incorporated herein by this reference).

In order to induce Lender to make the Loan, Borrower desires to absolutely assign to Lender all rents and income from the Property and to collaterally assign all present and future leases (including the Master Lease) covering all or any part of the Property.

NOW, THEREFORE, in consideration of the above stated premises and of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Borrower, Borrower hereby covenants and agrees with Lender as follows:

1. Absolute Assignment of Rents and Profits. Borrower hereby absolutely, presently and unconditionally grants, assigns, transfers and sets over unto Lender, and not as additional security for the Obligations (as defined in the Loan Agreement), subject to all of the terms, covenants and conditions set forth herein, all of Borrower’s right, title and interest in and to the following, whether arising under the Leases (as hereinafter defined), by statute, at law, in equity, or in any other way:

All of the rents, income, profits, revenue, sums payable by lease guarantors, judgments, condemnation awards, insurance proceeds, unearned insurance premiums, Lease Termination Funds and any other fees or sums payable to Borrower or any other Person as landlord and other benefits and rights of the Property arising from the use, occupancy, operation or management of all or any portion thereof or from all the Leases and any proceeds, deposits or security deposits (subject to the rights, if any, of Tenants [defined below]) relating thereto, including, without limitation, any award to Borrower made hereafter in any court involving any of the tenants under the Leases (“**Tenants**”) in any bankruptcy, insolvency, or reorganization proceeding in any state or federal court, and Borrower’s right to appear in any action and/or to collect any such award or payment, and all payments by any Tenant in lieu of rent (collectively, “**Rents and Profits**”).

The assignment of Rents and Profits set forth herein shall be an absolute, present and unconditional assignment and shall, immediately upon execution, give Lender the right to collect all Rents and Profits without the necessity of instituting legal proceedings of any kind whatsoever to enforce the provisions of this Assignment. Borrower hereby irrevocably appoints Lender its true and lawful attorney, such appointment being coupled with an interest and exercisable following the occurrence of an Event of Default (as defined in the Loan Agreement), to act on behalf of Borrower, should Lender so elect, to, at any time, demand, receive and enforce payment, give receipts, releases and satisfactions, and sue, either in the name of Borrower or in the name of Lender, for all such Rents and Profits and apply the same to the Indebtedness evidenced by the Note.

2. Collateral Assignment of Leases. Borrower hereby absolutely, presently and unconditionally grants, assigns, transfers and sets over unto Lender, as additional security for the Obligations, subject to all of the terms, covenants and conditions set forth herein, all of Borrower’s right, title and interest in and to the following, whether arising under the Leases, by statute, at law, in equity, or in any other way:

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(a) All of the leases of the Property which are in effect on the date hereof, including the Master Lease, and all such leases entered into or in effect from time to time after the date hereof, including, without limitation, all amendments, extensions, replacements, modifications and renewals thereof and all subleases, concession agreements, any ground leases or ground subleases and all other agreements affecting the same and all guaranties thereunder (collectively, the “Leases”); and

(b) All contracts, agreements, management, operating and maintenance agreements, warranties, licenses, permits, guaranties of any Leases and sales contracts relating to the Property or any of the Leases, entered into by, binding upon or inuring to the benefit of Borrower (the “Contracts”).

3. Purpose of Collateral Assignment of Leases. Borrower hereby agrees that this Assignment is given by Borrower to Lender to secure the Obligations.

4. Revocable License to Collect Rents and Profits.

(a) Subject to the terms and conditions of this Assignment, so long as no Event of Default has occurred, Borrower shall have a license (“License”) to manage the Property, to collect, receive and use all Rents and Profits, except as otherwise set forth in Section 4(b) hereof, in the ordinary course and in accordance with the terms of the Leases; to let the Property and to take all actions which a reasonable and prudent landlord would take in enforcing the provisions of the Leases and Contracts; provided, however, that all amounts so collected shall be applied toward operating expenses, real estate taxes and insurance relating to the Property, capital repair items necessary to the operation of the Property, and the payment of sums due and owing under this Assignment and any of the other Loan Documents prior to any other expenditure or distribution by Borrower.

(b) From and after the occurrence of an Event of Default under any Loan Document (whether or not Lender shall have exercised Lender’s option to declare the Loan immediately due and payable), the License shall be automatically revoked without any notice to Borrower or any other action by Lender. Borrower hereby irrevocably authorizes and directs (i) each of the Tenants, upon receipt of a written notice from Lender so demanding, to pay all Rents and Profits due or which become due under its Lease directly to Lender, and (ii) each property manager of any part of the Property, upon receipt of a written notice from Lender to pay all Rents and Profits thereafter received by such property manager directly and promptly to Lender. For the purpose of accounting, the books and records of Lender shall be deemed prima facie correct. Borrower may apply in writing to Lender for a reinstatement of Borrower’s right to collect rents, income and profits from the Lease or Contracts; however, Lender shall be under no obligation to do so.

5. Remedies of Lender. Notwithstanding and in addition to Lender’s absolute right to the Rents and Profits, upon the occurrence of any Event of Default, Lender in person or by agent or by court-appointed receiver (and Lender shall have the right to the immediate appointment of such a receiver without regard to the adequacy of the security, and Borrower hereby irrevocably consents to such appointment and waives notice of any application therefor) may, at its option, without any action on its part being required, without in any way waiving such default, with or without the appointment of a receiver, or an application therefor:

(a) exercise any rights and remedies set forth in Article I of the Security Instrument.

(b) perform as landlord under the Leases and as a party under the Contracts, but Lender shall not have the obligation to do so;

(c) demand, receive and enforce payment, give receipts, releases and satisfactions, and sue, either in the name of Borrower or in the name of Lender, for all such Rents and Profits and apply the same to the Indebtedness;

(d) take whatever measures Lender from time to time deems necessary or desirable to exercise, enforce, perform or protect Lender's rights, titles or interests in any or all of the Loan Documents; and

(e) exercise any other remedies permitted to Lender under applicable law.

Lender owns the Rents and Profits and the collections thereof, and the receipt by Lender of any Rents and Profits pursuant to this Assignment after the institution of foreclosure proceedings under the Security Instrument shall not cure any such Event of Default or affect such proceedings or any sale pursuant thereto. This Assignment is an absolute assignment of the Rents and Profits, and the election by Lender to exercise one or more or none of its remedies shall not diminish such absolute assignment or Lender's ownership of the Rents and Profits.

6. Application of Proceeds. Any proceeds collected by Lender hereunder shall be applied by Lender to pay, in such order as Lender shall elect, the following: (i) all costs and expenses of controlling, managing and operating the Property, including, but not limited to, the Indebtedness, and reasonable Attorneys' Fees, including any fees in the representation of Lender in any proceeding under Title 11, United States Code; (ii) satisfying the requirements of the Leases, including, but not limited to, all costs and expenses for maintenance, repairs, replacements and alterations; (iii) special assessments, taxes, insurance, all amounts evidenced, secured, permitted or required to be spent, escrowed or reimbursed pursuant to any of the Note, the Security Instrument, or any of the other Loan Documents; (iv) fees of representatives designated by Lender to manage and operate the Property; and (v) all other expenses pertaining to all or any part of the Property, the Leases and the Contracts.

7. Indemnity and Lender's Disclaimer.

(a) Lender shall not be obligated to perform or discharge nor does it hereby undertake to perform or discharge any obligation, duty or liability under the Leases, under the Contracts or under or by reason of this Assignment. Borrower shall and does hereby agree to indemnify Lender for and to defend and hold Lender harmless from any and all obligations, liabilities, losses, costs, expenses, civil fines, penalties or damages (including reasonable attorneys' fees) which Lender may incur under the Leases, under the Contracts or under or by reason of this Assignment, and from any claims whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on Lender's part to perform or discharge any of the terms, covenants or agreements contained in the Leases or the Contracts. Should Lender incur any such obligation, liability, loss, cost, expense, civil fine, penalty or damage under the Leases, under the Contracts or under or by reason of this Assignment, or in the defense of any of such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby; and Borrower shall reimburse Lender therefor immediately upon demand and upon failure of Borrower to do so, Lender may declare all sums so secured to be immediately due and payable. The foregoing indemnity shall not be applicable to any such claim, liability, loss, cost, expense or damage arising solely from Lender's gross negligence or willful misconduct in exercising its remedies hereunder.

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In the event Lender acquires title to the Property, the foregoing indemnity shall not be applicable to claims, liability, loss, cost, expense or damage arising from Lender's actions taken thereafter under the Leases or the Contracts.

(b) This Assignment shall not be deemed or construed to constitute Lender as mortgagee-in-possession of the Property or to obligate Lender to take any action hereunder, to incur expenses or to perform or discharge any obligation, duty or liability hereunder or under the Leases or under the Contracts, and Lender is not required to take possession of the Property as a condition to the assignment contained herein. Acceptance of this Assignment shall not impair, affect or modify any of the terms and conditions of the Loan Documents.

8. Waiver and Discretion. The failure of Lender to enforce any of the terms, covenants or conditions hereof shall not be construed or deemed to be a waiver of any rights or remedies hereunder. Lender shall have the full right, power and authority to enforce this Assignment, and/or any of the terms, covenants or conditions hereof, at any time or times that Lender shall deem fit.

9. Notices. All notices expressly provided hereunder to be given by Lender to Borrower and all notices and demands of any kind or nature whatever which Borrower may be required or may desire to give to or serve on Lender shall be served in the manner set forth in the Security Instrument, reference to which is made for all purposes.

10. Performance and Release. The full repayment of the Indebtedness and the performance of all of the Obligations and the duly recorded release thereof or reconveyance of the Property described in the Security Instrument shall constitute a reassignment of the Leases hereby assigned to Lender.

11. Binding Effect. This Assignment applies to and binds the parties hereto and their respective heirs, administrators, executors, successors and assigns (including any trustee or debtor-in-possession appointed in any proceeding under Title 11, United States Code), as well as any subsequent owner of the Property (or any portion thereof).

12. Actions by Lender. Lender may take or release any security, may release any party primarily or secondarily liable for any Indebtedness, may grant extensions, renewals or indulgences with respect to such Indebtedness, and may apply any security therefor held by it to the satisfaction of such Indebtedness, without prejudice to any of its rights hereunder.

13. No Election of Remedies. Nothing herein contained and no act done or omitted by Lender pursuant to the powers and rights granted it herein shall be deemed to be a waiver by Lender of its rights and remedies under the Loan Agreement, the Note, the Security Instrument, or any of the other Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms thereof. The right of Lender to collect said Indebtedness and to enforce any security therefor held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder. It is the intent of both Borrower and Lender that this Assignment be supplementary to, and not in substitution or derogation of, any provision contained in the Security Instrument giving Lender (as beneficiary thereunder) any interest in or rights with respect to the Property or any provision in any of the other Loan Documents giving Lender any interest or rights with respect to any other collateral. Accordingly, this Assignment shall not be construed in any way to impair or

limit any rights or interests which Lender would otherwise have with respect to the Property by reason of the Security Instrument.

14. No Merger. Neither this Assignment nor pursuit of any remedy hereunder by Lender shall cause or constitute a merger of the interests of the Tenant and the landlord under any of the Leases such that any of the Leases hereby assigned are no longer valid and binding legal obligations of the parties executing the same.

15. Governing Law. THIS ASSIGNMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OR COMMONWEALTH IN WHICH THE PROPERTY IS LOCATED WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. IN ANY LITIGATION IN CONNECTION WITH OR TO ENFORCE THIS ASSIGNMENT, BORROWER HEREBY IRREVOCABLY CONSENTS AND CONFERS PERSONAL JURISDICTION ON THE STATE COURTS OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED, OR ON THE UNITED STATES DISTRICT COURT OR THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT IN WHICH THE PROPERTY IS LOCATED. BORROWER EXPRESSLY WAIVES ANY OBJECTIONS AS TO VENUE IN ANY SUCH COURTS AND AGREES THAT SERVICE OF PROCESS MAY BE MADE ON BORROWER BY MAILING A COPY OF THE SUMMONS AND COMPLAINT BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO BORROWER'S ADDRESS. NOTHING CONTAINED HEREIN SHALL, HOWEVER, PREVENT LENDER FROM BRINGING ANY ACTION OR EXERCISING ANY RIGHTS WITHIN ANY OTHER STATE OR JURISDICTION OR FROM OBTAINING PERSONAL JURISDICTION BY ANY OTHER MEANS AVAILABLE BY APPLICABLE LAW.

16. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING THAT RELATES TO OR ARISES OUT OF THIS ASSIGNMENT OR THE ACTS OR FAILURE TO ACT OF OR BY LENDER IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS ASSIGNMENT.

17. Severability. The parties hereto intend and believe that each provision of this Assignment comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or any portion of any provision contained in this Assignment is held by a court of law to be invalid, illegal, unlawful, void or unenforceable as written in any respect, then it is the intent of all parties hereto that such portion or provision shall be given force to the fullest possible extent that it is legal, valid and enforceable, that the remainder of the Assignment shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion or provision was not contained therein, and that the rights, obligations and interests of Lender under the remainder of this Assignment shall continue in full force and effect.

18. Entire Agreement; Modification. This Assignment, together with the other Loan Documents, and together with any exhibits, appendices, addenda, and schedules hereto or thereto, encompass the final and entire agreement of the parties hereto and supersede any and all prior agreements, promises, negotiations, representations, understandings, or inducements, whether express or implied, oral or written, relating to the subject matter hereof. This Assignment may not be amended or modified orally, but only by an agreement in writing signed by the party against whom enforcement of any amendment or modification is sought.

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19. Not Mortgagee-in-Possession. Neither the assignment of Rents and Profits, Leases and Contracts to Lender nor the exercise by Lender of any of its rights or remedies hereunder shall be deemed to make Lender a “mortgagee-in-possession” or otherwise liable in any manner with respect to the Property, unless and until Lender, in person or by agent, assumes actual possession thereof; nor shall appointment of a receiver for the Property by any court at the request of Lender or by agreement with Borrower, or the entering into possession of the Property by such receiver, be deemed to make Lender a “mortgagee-in-possession” or otherwise liable in any manner with respect to the Property.

20. Loan Documents; Incorporation; Definitions. All of the provisions of the Loan Documents are incorporated into this Assignment to the same extent and with the same force as if fully set forth in this Assignment. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement.

21. Captions. The captions of this Agreement are inserted only for the purpose of convenience, and in no way define, limit or prescribe the scope or extent of this Assignment or any part hereof.

22. Exhibit. Exhibit A is attached hereto and incorporated herein by reference.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]

[Signature Page to Absolute Assignment of Rents and Profits]

IN WITNESS WHEREOF, Borrower has caused this instrument to be duly executed under seal as of the date first above written.

BORROWER:

DEER PARK 1, LLC, a Utah limited liability company

By: *Michael B. Horan*
Name: Michael B. Horan
Title: Manager

[CORPORATE SEAL]

STATE OF Montana
COUNTY OF Yellowstone

The foregoing instrument was executed and acknowledged before me this 25 day of April, 2024, by Michael B. Horan (name of person acknowledging), who executed the foregoing in the capacity, and on behalf of the entity or entities, as indicated therein.

Jasmyne Coble
(Notary's official signature)

02/16/2025
(Commission expiration)

[NOTARY SEAL]

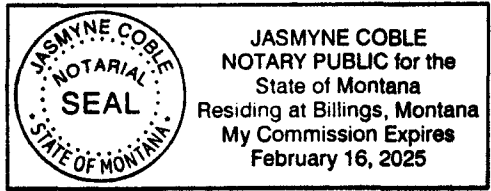


EXHIBIT A

The Land

PARCEL 1:

Lot 1, DEER PARK SUBDIVISION, according to the official plat thereof as recorded in the office of the Utah County Recorder on April 5, 2022 as Entry No. 42674:2022, in the office of the Utah County Recorder.

PARCEL 1A:

A non-exclusive easement for access, appurtenant to Parcel 1, as set for and defined in that certain Reciprocal Access Easement Agreement recorded July 17, 2023 as Entry No. 46139:2023, in the office of the Utah County Recorder.

Tax Id No.:
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