

404

ENT12482:2022 PG 1 of 6  
Andrea Allen  
Utah County Recorder  
2022 Jan 28 03:01 PM FEE 40.00 BY AR  
RECORDED FOR First American Title Insurance Company - NCS Washington DC  
ELECTRONICALLY RECORDED

After recordation return to:

~~Independent Bank~~  
~~P.O. Box 3035~~

~~McKinney, Texas 75070~~

When Recorded Return to: *Bob Chang / Lenders*  
First American Title Insurance Company  
National Commercial Services  
401 E. Pratt Street, Suite 323  
Baltimore, MD 21202  
File No: NCS *1069498*

**ASSIGNMENT OF LEASES AND RENTS**

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is given as of the 21<sup>st</sup> day of January, 2022, by **Drake Motor Partners SLC LLC**, a Colorado limited liability company ("Assignor"), to **Independent Bank**, a Texas state bank association, whose address is 3301 East First Avenue, Denver, Colorado 80206 ("Assignee").

**RECITALS**

A. Assignor is the owner of the real property described in **Exhibit A** attached hereto, and located at 2265 West 700 South, Pleasant Grove, Utah. That real property, together with all improvements now or hereafter located thereon and all appurtenances thereto, is referred to as the "Property."

B. Assignor has executed a promissory note (the "Note") dated the same date hereof, payable to the order of Assignee in the stated principal amount of \$12,628,000, which Note is secured, in part, by a deed of trust dated the same date hereof (the "Deed of Trust"), executed by Assignor for the use and benefit of Assignee, encumbering the Property. The Note; the Deed of Trust; the Acquisition and Construction Loan Agreement dated the same date hereof, executed by Lender and Assignor in connection with the Note (the "Loan Agreement"); this Assignment; and all other documents executed or delivered by Assignor in connection with the indebtedness evidenced by the Note (the "Loan"), as any or all such documents may be amended, substituted for, or replaced from time to time, are referred to collectively as the "Loan Documents."

**ASSIGNMENT**

NOW, THEREFORE, as additional security for the payment and performance of all obligations of Assignor to Assignee evidenced by or referred to in the Loan Documents, whether now existing or subsequently incurred, Assignor hereby undertakes and agrees as follows:

1. Assignment of Leases. Assignor hereby transfers, assigns, and conveys to Assignee all right, title and interest of Assignor in and to (a) all existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or any part of the Property, whether written or oral and whether for a definite term or month to month, together with all guarantees of the lessee's obligations thereunder and together with all extensions, modifications and renewals thereof, including but not limited to the Tesla Motors Lease (as defined in the Loan Agreement) (collectively, the "Leases" and individually, a "Lease"), and (b) all income, receipts, revenues, rents, issues and profits now or hereafter arising from or out of the Leases or from or out of the Property or any part thereof, including without limitation minimum rents, additional rents, percentage rents, parking and maintenance charges and fees, tax and insurance contributions, proceeds of the sale of utilities and services, cancellation premiums, claims for damages arising from any breach of the Leases, proceeds from any sale or other disposition of all or any portion of

the Property, and all other benefits arising from the use or enjoyment of, or the lease, sale or other disposition of, all or any portion of the Property, together with the immediate and continuing right to receive all of the foregoing (collectively, the "Rents").

2. Assignment of Rents and Other Income. Assignor hereby transfers, assigns, and conveys to Assignee all of Assignor's right, title, and interest in and to all deposits, (whether for security or otherwise), letters of credit, rents, issues, profits, revenues, royalties, contract rights, and benefits of every nature of and from the Property (collectively, the "Other Income").

3. Representations and Warranties Regarding Leases. Assignor represents, warrants and covenants (a) that it now is (or with respect to Leases not yet in existence, will be immediately upon the execution thereof) the absolute owner of the Leases and Rents and Other Income, with full right and title to assign the same; (b) that any existing Leases are valid, in full force and effect; (c) that there is no outstanding assignment or pledge of the Leases, Rents, or Other Income; (d) that there are no existing defaults under the terms of the Leases on the part of any party thereto; (e) that the lessees thereunder have no present defenses, set-offs, or counterclaims against Assignor; and (f) that the Rents and Other Income have not been waived, discounted, compromised, or setoff, and that no Rents or Other Income have been or will be hereafter anticipated, collected for more than one month in advance, discounted, released, waived, compromised, or otherwise discharged without Assignee's prior written consent.

4. Affirmative Covenants of Performance by Assignor. Assignor shall (a) fulfill or perform each and every term, covenant and provision of the Leases to be fulfilled or performed by the lessor or landlord thereunder; (b) give prompt notice to Assignee of any notice received by Assignor of default thereunder or of any alleged default or failure of performance that could become a default thereunder, together with a complete copy of any such notice; and (c) enforce, short of termination thereof, the performance or observance of each and every term, covenant and provision of each of the Leases to be performed or observed by the lessees and tenants thereunder.

5. Assignor's Negative Covenants. Assignor shall not, without the prior written consent of Assignee: (a) assign, transfer, pledge or encumber, the whole or any part of the Leases or Rents or Other Income to anyone other than Assignee; or (b) accept any Rents more than one month in advance of the accrual thereof.

6. Defense of Actions. Assignor will, at Assignor's sole cost and expense, appear in and defend any action or proceeding arising under, growing out of, or in any way connected with the Leases or the obligations, duties, or liabilities of the lessor or lessee thereunder, and will pay on request all costs and expenses, including attorneys' fees, which Assignee may incur in connection with Assignee's appearance, voluntary or otherwise, in any such action or proceeding.

7. Revocable License to Collect Rents. Assignee hereby grants to Assignor a revocable license to collect the Rents and Other Income and apply the same to the payment of the Loan and other amounts owing to Assignee. All Rents and Other Income collected shall be applied first to any outstanding operating expenses and payments then due and payable under the Loan Documents before any remainder is distributed to Assignor's shareholders. Upon the occurrence of a default under the terms of this Assignment or any Event of Default as defined in any of the other Loan Documents, and at any time thereafter while such Event of Default is continuing Assignee may without further notice to Assignor, revoke such license, and upon such revocation may demand and collect Rents and Other Income in the possession of Assignor, and from tenants of the Property pursuant to Section 8 below. Receipt and application of the Rents and Other Income by Assignee shall not constitute a waiver of any right of Assignee under this Assignment, the Deed of Trust, or applicable law, shall not cure any Event of Default hereunder, and shall not invalidate or affect any act done in connection with such Event of Default, including, without limitation, any trustee's sale or foreclosure proceeding.

8. Direction to Lessees. Assignor hereby irrevocably agrees and directs that the lessee under each Lease shall, upon notice from Assignee to the lessees, pay all Rents and Other Income under such Lease to Assignee, without liability on the part of such lessee for determining the validity or propriety of Assignee's revocation of such waiver, and notwithstanding any claim by Assignor that Assignee's revocation of such waiver is invalid or improper. Assignor will have no claim against any such lessee for any Rents or Other Income paid by such lessee to Assignee. Assignor hereby authorizes and directs the lessees and tenants under the Leases that, upon such written notice from Assignee, all Rents and Other Income shall be paid directly to Assignee as they become due. Assignor hereby relieves the lessees and tenants from any liability to Assignor by reason of the payment of the Rents and Other Income to Assignee.

9. Assignee's Right of Possession. At any time after the execution of this Assignment, Assignee may, at its option, enter and take possession of the premises affected by any Lease and perform all acts necessary for the operation and maintenance of such premises in the same manner and to the same extent as Assignor could do the same things. Without limiting the effect of the preceding sentence, Assignee is empowered, but shall have no obligation, to collect the Rents and Other Income accruing under the Leases or any of them, to enforce payment thereof and the performance of any and all terms and provisions thereof, to exercise all of the rights and privileges of Assignor thereunder, including the right to fix or modify rents, to demand and sue for possession of the premises covered by any Lease, and to relet such premises and collect the Rents and Other Income resulting from such reletting. Assignee will from time to time apply the net income derived under the Leases, after payment of all proper costs and charges (including any loss or damage of the nature referred to in Section 11 hereof, and including attorneys' fees and other costs of collection) to any sums then due Assignee under the Loan Documents, in such order as Assignee may elect, but Assignee will in no event be accountable for any sums not actually received by Assignee pursuant to this Assignment.

10. Revocable Waiver of Assignee's Rights. By accepting this Assignment, Assignee waives the right to exercise the rights and powers granted to Assignee in Section 9 above, and covenants and agrees not to revoke such waiver until and unless there has been a default under this Assignment or an Event of Default as defined in any of the Loan Documents. If any such default or Event of Default occurs and is not cured within any applicable grace period, Assignee may at any time (including the time covered by any foreclosure proceeding and the period provided for redemption, if any) revoke such waiver without notice, and upon such revocation may proceed to exercise any or all of the rights and powers conferred upon Assignee in said Section 9.

11. Limitation on Assignee's Duties; Indemnification. Prior to Assignee's actual entry and taking possession of the premises immediately affected by any Lease, this Assignment shall not operate to place responsibility upon Assignee for the condition, safety, control, care, management, or repair of such premises. Nothing contained herein shall be construed to bind Assignee at any time to the performance of any of the terms or provisions contained in any Lease, or otherwise to impose any obligation on Assignee, including, without limitation, any liability under any covenant of quiet enjoyment contained in any Lease if any Lease is terminated or any lessee dispossessed upon foreclosure of any of the Loan Documents. Assignor agrees to indemnify Assignee against and hold Assignee harmless from any and all claims, liabilities, losses, expenses, or damages, including attorneys' fees, which Assignee may incur under any Lease, or by reason of this Assignment, as well as any and all claims and demands which may be asserted against Assignee by reason of any alleged obligation or undertaking to be performed or discharged by Assignee under any such Lease or under or by reason of this Assignment.

12. Assignee's Right to Perform Defaulted Obligations. If Assignor fails to make any payment or to perform any act required of Assignor under the terms hereof, then Assignee may, but will not be obligated to, without notice to or demand on Assignor, and without releasing Assignor from any obligation under this Assignment, make the payment or perform the act in such manner and to such extent as Assignee may deem necessary to protect the security hereof, including specifically, without limitation, appearing in

and defending any action or proceeding purporting to affect the security hereof or the rights or powers of Assignor or Assignee, and performing or discharging any obligation, covenant, or agreement of Assignor under any Lease. In exercising any of such powers, Assignee may pay all necessary costs and expenses, employ counsel, and incur and pay attorneys' fees. Any sum advanced or paid by Assignee for any such purpose shall be immediately due and payable to Assignee by Assignor, and shall bear interest from the date paid or advanced by Assignee until repaid by Assignor at the "Default Rate" as defined in the Note.

13. Cross-Default Clause. Any default by Assignor in the performance or observance of any covenant or condition hereof shall be deemed a default or event of default under each of the Loan Documents, entitling Assignee (upon the expiration of any grace period provided for in any other Loan Document) to exercise all or any remedies available to Assignee under the terms of any or all Loan Documents, and any default or event of default under any other Loan Document shall be deemed a default hereunder, entitling Assignee (upon the expiration of any such grace period) to exercise any or all remedies provided for herein. Failure by Assignee to exercise any right which it may have hereunder shall not be deemed a waiver thereof unless so agreed in writing by Assignee, and the waiver by Assignee of any default by Assignor hereunder shall not constitute a continuing waiver or a waiver of any other default or of the same default on any future occasion.

14. Reassignment by Assignee. Assignee may assign all of Assignor's right, title, and interest in any or all Leases (to the extent of the interests therein conferred upon Assignee by the terms hereof) to any subsequent holder or owner of the Note or other Loan Documents, or to any person who acquires title to the Property through foreclosure or otherwise. From and after the acquisition of title to the Property by any person, through foreclosure or conveyance in lieu of foreclosure, no assignee of Assignor's interest in any Lease shall be liable to account to Assignor for the Rents and Other Income thereafter accruing. The recording of any valid release of the Deed of Trust shall operate as a release of this Assignment in favor of the then owner of the Property; provided that the recording of any valid partial release of the Deed of Trust shall operate as a release hereof only with respect to that portion of the Property thereby released from the Deed of Trust; the term "Property" as used herein being deemed thereafter to refer only to that portion of the Property remaining encumbered by the Deed of Trust, and the term "Assignor" as used herein being deemed thereafter to refer only to the owner or owners of such remaining portion of the Property; and provided further that the affidavit of any officer of Assignee stating that any part of the indebtedness secured hereby remains unpaid shall constitute conclusive evidence of the validity, effectiveness, and continuing force of this Assignment, and any person may and is hereby authorized to rely upon such affidavit.

15. Binding Effect. The provisions of this Assignment shall bind and benefit the parties hereto and their respective successors and permitted assigns.

16. No Liability for Security Deposits. Assignee has not received, and there has not been transferred to Assignee, any security deposited by any lessee with Assignor (or any lessor) under the terms of any of the Leases, and Assignee assumes no responsibility or liability for any security so deposited.

17. Notices. All notices required hereunder shall be in writing and shall be delivered in accordance with the notice provisions of the Loan Agreement, which provisions are hereby incorporated herein by reference.

18. Applicable Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Texas, without reference to its conflict of laws principles.

**[SIGNATURE PAGE TO FOLLOW]**

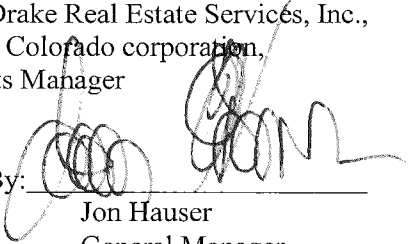
Executed and delivered as of the date first set forth above.

ASSIGNOR:

**Drake Motor Partners SLC LLC,**  
a Colorado limited liability company

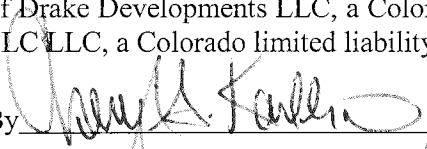
By: Drake Developments LLC,  
a Colorado limited liability company,  
its Manager

By: Drake Real Estate Services, Inc.,  
a Colorado corporation,  
its Manager

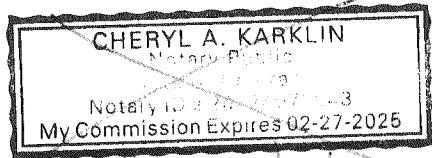
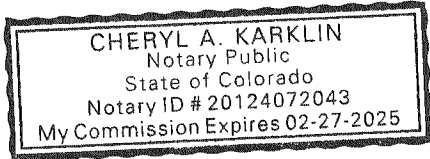
By:   
Jon Hauser  
General Manager

STATE OF COLORADO )  
 )  
 )ss.  
 )  
City: Denver COUNTY OF Denver

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of January, 2022, by Jon Hauser, as General Manager of Drake Real Estate Services, Inc., a Colorado corporation, as Manager of Drake Developments LLC, a Colorado limited liability company, as Manager of Drake Motor Partners SLC LLC, a Colorado limited liability company.

By:   
Notary Public in and for the State of Colorado

Residing at 4516 S. Broadway, Denver, CO  
My commission expires 2/27/2025



**EXHIBIT 'A'**

Property: **Vacant Land, Pleasant Grove, UT 84062**

**PARCEL 1:**

**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.**

**PARCEL 2:**

**REAL PROPERTY RIGHTS AS MORE PARTICULARLY DESCRIBED IN AN AGREEMENT OF EASEMENTS AND RESTRICTIVE COVENANTS DATED \_\_\_\_\_, 2022, BY AND BETWEEN VALLEY GROVE V, LLC AND DRAKE MOTOR PARTNERS SLC LLC AND RECORDED \_\_\_\_\_, 2022 AS ENTRY NO. \_\_\_\_\_ OF OFFICIAL RECORDS.**

**Part of A.P.N. 14-054-0155**