

WHEN RECORDED, RETURN TO:

Western AgCredit, FLCA
10980 South Jordan Gateway
P.O. Box 95850
South Jordan, UT 84095-0850

Ent 280273 Page 1 of 10
Date: 20-JUN-2023 1:17:45PM
Fee: \$40.00 Charge Filed By: CP
CINDY PETERSON, Recorder
BEAVER COUNTY CORPORATION
For: TITLEFIRST

Customer No. 7006326

GROUND LEASE ESTOPPEL CERTIFICATE AND CONSENT

The Ground Lease Estoppel Certificate and Consent (the "Certificate") is made and executed this 5th day of June, 2023 (the "Closing Date") by and between MURPHY-BROWN LLC, a Delaware Limited Liability Company, doing business as SMITHFIELD HOG PRODUCTION ("Ground Lessor"), and DA COOMBS INC., a Utah Corporation and DREW A. COOMBS (collectively "Borrower"), to and for the benefit of Western AgCredit, FLCA, a corporation ("Lender").

RECITALS

A. Ground Lessor and DA COOMBS INC., a Utah Corporation ("Lessee") entered into that certain PINNACLE DEVELOPMENT - REAL PROPERTY LEASE dated effective October 3, 2018 (evidenced by Notice of Lease dated October 3, 2018 recorded on the records of Beaver county as entry number 266922) as thereafter extended, modified and/or amended (the "Ground Lease") whereby Ground Lessor agreed to lease to Lessee a leasehold interest in the real property described in the Ground Lease, which is located in Beaver County, State of Utah and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. Pursuant to a Promissory Note and Loan Agreement dated June 5, 2023 in the original principal amount of One Million Six Hundred Seven Thousand Dollars and No Cents (\$1,607,000.00) (the "Note"), Lender has loaned the proceeds of the Note to Borrower in connection with the development of the Property (the "Loan").

C. In connection with the Loan, Lessee has agreed to grant to Lender a lien on its leasehold interest in the Property, and to assign to Lender all of Lessee's interest as tenant in the Ground Lease.

D. As a condition to making the Loan, Lender is requiring and Ground Lessor has agreed to make certain representations and warranties concerning the Ground Lease and to consent to the other transactions described in this Certificate.

ESTOPPEL CERTIFICATE AND CONSENTS

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Ground Lessor agrees as follows:

1. **Estoppel Certificate.** Ground Lessor hereby certifies to and agrees with Lender that as of the date of this Agreement, Lender is relying on all of the following certifications, representations, warranties and agreements of Ground Lessor in consideration for Lender making the Loan to Borrower and hereby makes all of the following representations, warranties, and agreements:

a. The Ground Lease is in full force and effect and is the valid and binding obligation of Ground Lessor and Lessee, enforceable in accordance with its terms.

b. All requirements for the commencement and validity of the Ground Lease have been satisfied.

c. Neither Ground Lessor nor Lessee, to the best of Ground Lessor's knowledge, is in default under the Ground Lease and no event has occurred and no condition exists, which with the giving of notice, the passage of time, or both, would constitute a default by Ground Lessor or Lessee under the Ground Lease.

d. To the best of Ground Lessor's knowledge, there are no defenses, counterclaims or setoffs against rents or charges due or which may become due under the Ground Lease and no claim by Lessee of any nature exists against Ground Lessor under the Ground Lease. All obligations of Ground Lessor have been fully performed under the Ground Lease.

e. None of the rent which Lessee is required to pay under the Ground Lease has been prepaid, or will in the future be prepaid, more than one month in advance.

f. Except as specifically set forth in the Ground Lease, Lessee has no right or option to purchase all or any portion of the Property.

g. The Ground Lease has not been modified, terminated, or amended, by "side letter" or otherwise except as expressly set forth in the Ground Lease. Any future modification, termination, cancellation or amendment of the Ground Lease without the prior written consent of or notice to Lender shall be void as to Lender.

h. Ground Lessor has not mortgaged, pledged, encumbered, or otherwise transferred the Property or its interest in the Property.

2. **Notice and Opportunity to Cure.** Ground Lessor, on giving Lessee any notice of default pursuant to the terms of the Ground Lease, shall also give a copy of such notice to Lender at the last address which Ground Lessor has been given by Lender. Lender's address as of the date of the execution of this Certificate is set forth in this Certificate. Lender, its successor or

assigns, may, within the period given to Lessee in the Ground Lease, and for an additional fifteen (15) days after the expiration of the period given to Lessee in the Ground Lease (or such extended time as is set forth in the Ground Lease), remedy such default or cause such default to be remedied, and Ground Lessor shall accept such performance by or at the instance of Lender, its successor or assigns, as if such performance had been made by Lessee. Ground Lessor shall accept performance by Lender, its successor or assigns, or any purchaser at a foreclosure sale, of any term, covenant, condition, or agreement to be performed by Lessee under the Ground Lease with the same force and effect as though performed by Lessee, specifically including, but without limitation, any payment of rent under the Ground Lease.

3. **Non-Disturbance.** Ground Lessor agrees not to disturb the possession of the Property by Lessee or Lender and to cause all lienholders of the Property to agree, in a form acceptable to Lender, not to disturb the possession of Lessee, Lender, its successors and assigns, and any purchaser at a foreclosure sale, under the Ground Lease. Ground Lessor agrees to perform and be bound by all of the obligations imposed on Ground Lessor by the Ground Lease for the balance of the term of the Ground Lease, and any extension or renewals of the Ground Lease, as long as no event of default has occurred under the Ground Lease which has continued to exist for such period of time, after notice and opportunity to cure, required by the Ground Lease, as would entitle Ground Lessor under the Ground Lease to terminate the Ground Lease, or would cause, without any further action of Ground Lessor the termination of the Ground Lease or would entitle Ground Lessor to dispossess Lessee under the Ground Lease.

Ground Lessor agrees that it will not grant any liens on or otherwise grant any rights of any kind in the Property, unless and until such party to which the lien or interest is granted first grants to Lender notice, a right to cure, and a non-disturbance covenant, similar to the covenant set forth in this Section 3 acceptable to Lender. During the term of the Loan, Ground Lessor shall not grant any liens or rights in the Property senior to the Ground Lease or Lender's lien on the Property.

4. **No Liability of Lender.** Nothing contained in this Certificate or any other agreement is intended to constitute an agreement by Lender to perform any obligation of Lessee under the Ground Lease. Furthermore, notwithstanding any provision herein to the contrary, Ground Lessor acknowledges that in the event Lender obtains either possession of the Property or ownership of Lessee's interest in the Ground Lease as a result of Borrower's default of Borrower's obligations under the Loan, Lender shall not be deemed to have assumed any of Lessee's obligations under the Ground Lease except those obligations that run with the Property and accrue during the period of Lender's possession of the Property or ownership of Lessee's interests in the Ground Lease. Such an assumption shall require an express written affirmation by Lender.

5. **Right to Sublease and Mortgage.** Notwithstanding anything to the contrary in the Ground Lease, upon the transfer of a leasehold interest to the Property to Lender pursuant to a foreclosure sale or deed in lieu of foreclosure, Ground Lessor agrees that Lender, its successor or assigns, or any purchaser at a foreclosure sale, may sublease the Property or assign all of its or Lessee's rights in the Ground Lease with the consent of Ground Lessor which will not be unreasonably withheld. In addition, Lender, its successor or assigns, or any purchaser at a foreclosure sale, may mortgage, lien, encumber, or otherwise transfer the Ground Lease.

6. **Insurance Proceeds and Condemnation Awards.** Notwithstanding anything to the contrary in the Ground Lease, at any time any amount is owing to Lender under the Promissory Note and Loan Agreement executed in connection with the Loan, and all other documents executed in connection with the Loan (the "Loan Documents"), all proceeds from fire or extended coverage insurance or other insurance against casualty paid in connection with the Property, and all other improvements on the Property, and the leasehold interest in the Property shall be paid to Lender and applied in accordance with the terms of the Loan Documents; provided, however, the amount paid to Lender shall not exceed the amount owing to Lender under the Loan Documents.

7. **Future Estoppel Certificates.** Ground Lessor agrees to execute and deliver to Lender, within ten (10) days of request by Lender, estoppel certificates in a form similar to this Certificate regarding such matters as Lender requests. Ground Lessor shall not be obligated to deliver an estoppel certificate more often than one (1) time per calendar year, unless Lender determines, in its reasonable discretion, that an estoppel certificate is required more often.

8. **No Merger.** If any lien granted on the Property or assignment of any lease of the Property made to Lender and the fee title to the Property shall at any time become vested in one owner, the lien created under any trust deed granted or assignment made to Lender shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Lender shall continue to have and enjoy all of the rights and privileges of Lender, beneficiary, and assignee and, if applicable, fee title owner, as to the separate estates. In addition, upon the foreclosure of any such lien or assignment, any leases or subleases then existing and created by Ground Lessor or Lessee, shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Lender, its successor or assigns, or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Lender, its successor or assigns, or any such purchaser shall constitute a termination of any lease or sublease unless Lender, its successor or assign, or such purchaser shall give written notice of such termination to such tenant or subtenant.

9. **Consents.** Notwithstanding anything to the contrary in the Ground Lease, Ground Lessor hereby consents to the following anticipated security transaction, and documents entered into in connection therewith, and to the exercise by Lender, or its successor or assigns, or any purchaser at a foreclosure sale, of all rights and remedies available under the following documents, at law, in equity, or by statute; provided, however, all of the interests assigned as collateral are subject to the Ground Lease:

The lien on the Property created pursuant to a Leasehold Deed of Trust dated on or about the Closing Date and executed by Lessee as "Trustor", to and for the benefit of Lender as "Trustee" and "Beneficiary", together with all other documents executed in connection with the Loan.

Borrower acknowledges and consents to the agreements, terms, and conditions set forth in this Certificate.

10. **Notices.** All notices shall be in writing and shall be deemed to have been sufficiently given or served when personally delivered or when deposited in the United States mail, by

registered or certified mail, addressed as follows:

Lender: LENDER
Western AgCredit, FLCA
10980 South Jordan Gateway
P.O. Box 95850
South Jordan, UT 84095-0850

Ground Lessor: GROUND LESSOR
MURPHY-BROWN LLC
dba SMITHFIELD HOG PRODUCTION
341 South Main Street, PO Box 100, Milford, UT 84751
and 2822 Highway 24 West, Warsaw, NC 28398

Such addresses may be changed by notice to the other party given in the same manner provided in this Section.

11. Attorneys' Fees. Upon the occurrence of a default under this Certificate, Lender may employ an attorney or attorneys to protect Lender's rights under this Certificate, and Borrower shall pay Lender reasonable attorneys' fees and costs actually incurred by Lender, whether or not action is actually commenced against Borrower by reason of such breach. Ground Lessor shall pay to Lender any attorneys' fees and costs incurred by Lender with respect to any insolvency or bankruptcy proceeding or other action involving Ground Lessor.

12. No Further Consent. Lender and Borrower, at any time and from time to time, without notice to or consent of Ground Lessor and without affecting or impairing the obligations, terms or conditions of this Certificate or the Ground Lease, may renew, extend or refinance any part or all of any indebtedness of Borrower or any guarantor under the Loan.

13. Governing Law. This Certificate shall be governed by, construed and interpreted in accordance with the laws of the State of Utah.

14. Successors and Assigns. This Certificate shall be binding upon any successors or assigns of Ground Lessor and Borrower, and shall inure to the benefit of Lender and its successors and assigns.

15. Counterparts. This Certificate may be executed in any number of counterparts, each of which shall be deemed an original for all purposes, but all of which taken together shall constitute only one agreement. The production of any executed counterpart of this Certificate shall be sufficient for all purposes without producing or accounting for any other counterpart.

Copies of this Certificate, and fax signatures thereon, shall have the same force, effect and legal status as an original.

16. **Electronic Signatures.** The parties to this Certificate expressly agree that they may, but are not obligated to, conduct this transaction electronically, including by scan, email, fax, or other electronic means, pursuant to the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq. and the applicable Uniform Electronic Transactions Act, as amended or substituted. The person signing this Certificate by electronic means represents and warrants that he or she is the person represented through the electronic medium, and that he or she has full power and authority to electronically sign this Certificate.

17. **Defined Terms.** Unless otherwise defined in this Certificate, capitalized terms used herein have the meanings given them in the Loan Agreement.

*[SIGNATURE PAGE(S) AND EXHIBIT(S),
IF ANY, FOLLOW THIS PAGE]*

Dated: June 15, 2023

GROUND LESSOR:

MURPHY-BROWN LLC, a Delaware Limited Liability Company
dba SMITHFIELD HOG PRODUCTION

By: Ryan Floyd
Ryan Floyd, VP Finance

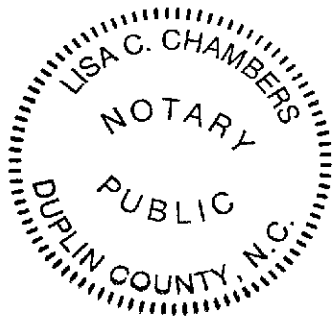
Notary Acknowledgment(s):

STATE OF North Carolina)
: ss.
COUNTY OF Duplin)

The foregoing instrument was acknowledged before me this 15 day of June, 2023, by Ryan Floyd, MURPHY-BROWN LLC, a Delaware Limited Liability Company dba SMITHFIELD HOG PRODUCTION of Ground Lessor.

Lisa C Chambers
Notary Public

Residing at: Rose Hill, NC



Expiration Oct. 15, 2023

LESSEE or BORROWER:

DA COOMBS INC., a Utah Corporation

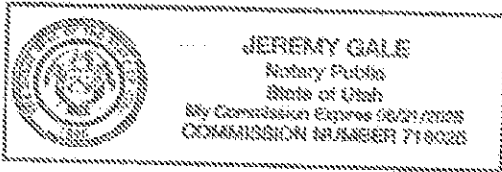
By: [Signature]
DREW ANTHONY COOMBS, President

[Signature]
DREW A. COOMBS also known as DREW ANTHONY COOMBS

Notary Acknowledgment(s):

STATE OF Utah)
COUNTY OF Beaver)^{SS}

On this 12 day of June 2023, before me, the undersigned Notary Public in and for said County and State, personally appeared DREW ANTHONY COOMBS [personally known to me] [proved to me on the basis of satisfactory evidence] to be the person who executed the within instrument as PRESIDENT, and on behalf of the corporation therein named, and acknowledged to me that the corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

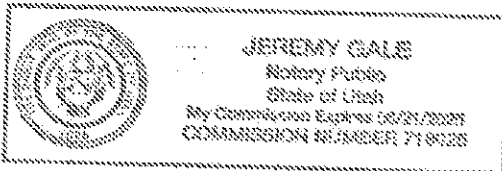


WITNESS my hand and official seal
[Signature]
Notary Public in and for said County and State

Notary Acknowledgment(s):

STATE OF Utah)
COUNTY OF Beaver)^{SS}

On this 12 day of June 2023, before me, the undersigned Notary Public in and for said County and State, personally appeared DREW A. COOMBS also known as DREW ANTHONY COOMBS [personally known to me] [proved to me on the basis of satisfactory evidence] to be the person who executed the within instrument.



WITNESS my hand and official seal
[Signature]
Notary Public in and for said County and State

EXHIBIT A

REAL PROPERTY DESCRIPTION

The real property located in Beaver County, State of Utah, and more particularly described as follows:

[SEE ATTACHED]

EXHIBIT "A"

Beginning at the East quarter corner of Section 34, Township 26 South, Range 10 West, of the Salt Lake Base and Meridian; thence South $00^{\circ} 01' 25''$ East, along the Section Line, 810.00 feet; thence North $89^{\circ} 57' 37''$ West, departing said line and running 1,945.25 feet; thence North $00^{\circ} 00' 19''$ West, 1,343.58 feet; thence South $89^{\circ} 57' 37''$ East, 1,945.16 feet to a point located on the East line of said Section 34; thence South $00^{\circ} 00' 47''$ West, along the Section line, 533.58 feet to the point of beginning.

Tax Parcel No. 02-0007-0005