



2319857016

Doc# 2319857016 Fee \$88.00

RHSP FEE:\$18.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 07/17/2023 02:20 PM PG: 1 OF 13

THIS INSTRUMENT PREPARED
OUTSIDE THE STATE OF ILLINOIS
BY AND WHEN RECORDED,
RETURN TO:

Brian S. Short, Esq.
Winstead PC
1415 Vantage Park Drive
Suite 450
Charlotte, North Carolina 28203

Permanent Tax Identification Numbers: 08-34-402-060-0000,
08-34-402-061-0000 and 08-34-402-062-0000
Street Addresses: 2200 Busse Road, Elk Grove Village, Illinois; and
1400 East Devon Avenue, Elk Grove Village, Illinois

TO BE RECORDED IN THE
LAND RECORDS OF
COOK COUNTY, ILLINOIS

STATE OF ILLINOIS §
§
COUNTY OF COOK §

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "Assignment") is made as of this 13th day of July, 2023, by **DIGITAL ELK GROVE 1, LLC** and **DIGITAL ELK GROVE 3, LLC**, each a Delaware limited liability company, each having an address at c/o Digital Realty Trust, L.P., 5707 Southwest Parkway, Building 1, Suite 275, Austin, Texas 78735, as assignor (together with its successors and permitted assigns, "Borrower"), for the benefit of **BARCLAYS CAPITAL REAL ESTATE INC.**, a Delaware corporation, having an address at 745 Seventh Avenue, New York, New York 10019, as agent for and on behalf of itself and the other lenders from time to time under the Loan Agreement (as defined herein), collectively as assignee (together with their respective successors and assigns, "Lender").

WITNESSETH:

A. This Assignment is given to secure a loan (the "Loan") made by Lender to Borrower pursuant to that certain Loan Agreement, dated as of the date hereof, between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement") and evidenced by that certain Promissory Note dated the date hereof, made by Borrower to Lender (together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter referred to as the "Note").

B. The Note is secured by that certain Mortgage, Assignment of Leases and Rents, 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"), made by Borrower for the benefit of Lender.

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C. Borrower desires to further secure the payment of the Debt and performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents.

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Assignment:

ARTICLE 1 **ASSIGNMENT**

Section 1.1 Property Assigned. Borrower hereby absolutely and unconditionally assigns and grants to Lender the following property, rights, interests and estates, now owned, or hereafter acquired by Borrower and all amendments, modifications, replacements, renewals and substitutions thereof:

(a) Leases. All leases, subleases (but only to the extent an Affiliate of Borrower is the sublandlord thereunder), lettings, licenses, concessions or other agreements to which Borrower is a party (or, as to any sublease under which an Affiliate of Borrower is the sublandlord, Borrower and/or its Affiliate have rights thereunder), whether now or hereafter in effect, pursuant to which any Person is granted a possessory interest in, or right to use, enjoy or occupy all or any portion of any space in that certain lot or piece of land, more particularly described in Exhibit A annexed hereto and made a part hereof, or all or any part of the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (collectively, the "**Property**"), and every modification, amendment or other agreement relating to such leases, subleases (but only to the extent an Affiliate of Borrower is the sublandlord thereunder) or other agreements to which Borrower is a party (or, as to any sublease under which an Affiliate of Borrower is the sublandlord, Borrower and/or its Affiliate have rights thereunder) entered into in connection with such leases, subleases (but only to the extent an Affiliate of Borrower is the sublandlord thereunder) or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto (collectively, the "**Leases**"). The term "**Leases**" shall include all agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Property or any portion thereof to which Borrower is a party (or, as to any sublease under which an Affiliate of Borrower is the sublandlord, Borrower and/or its Affiliate have rights thereunder) now or hereafter made, whether made before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code, together with any extension, renewal or replacement of the same; this Assignment of existing and future Leases and other agreements being effective without any further or supplemental assignment.

(b) Rents. Subject to Section 2.1 hereof, all rents, additional rents, rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in the event a Bankruptcy Event occurs) or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits (including, without limitation, cash, letters

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of credit or securities deposited under Leases to secure the performance by the lessees of their obligations thereunder)), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or Manager from any and all sources arising from or attributable to the Property (excluding the fees and amounts to which Manager is entitled pursuant to the Management Agreement), including, without limitation, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Borrower or Manager (excluding the fees and amounts to which Manager is entitled pursuant to the Management Agreement) and proceeds, if any, from business interruption or other loss of income insurance, whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code in each case (collectively, the “Rents”)

(c) Bankruptcy Claims. All of Borrower's rights to payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code (the “Bankruptcy Claims”).

(d) Lease Guaranties. All of Borrower's right, title and interest in and to any and all lease guaranties, letters of credit and any other credit support (individually, a “Lease Guaranty”, and collectively, the “Lease Guaranties”) given by any guarantor in connection with any of the Leases or leasing commissions (individually, a “Lease Guarantor”, and collectively, the “Lease Guarantors”) to Borrower.

(e) Proceeds. All proceeds from Borrower's sale or other disposition of the Leases, the Rents, the Lease Guaranties and/or the Bankruptcy Claims.

(f) Other. All rights, powers, privilege, options and other benefits of Borrower as lessor under any of the Leases and beneficiary under any of the Lease Guaranties, including, without limitation, the immediate and continuing right, upon the occurrence and during the continuance of an Event of Default, to make claim for, receive, collect and receipt for all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Debt), and to do all other things which Borrower or any lessor is or may become entitled to do under any of the Leases or Lease Guaranties.

(g) Entry. The right, at Lender's option, upon revocation of the license granted herein, subject to the occupancy rights of tenants under their respective Leases, to enter upon the Property in person, by agent or by court appointed receiver, to collect the Rents.

(h) Power Of Attorney. Upon the occurrence and during the continuance of an Event of Default, Borrower's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in Section 3.1 of this Assignment and any or all other actions designated by Lender for the proper management and preservation of the Property.

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ARTICLE 2 TERMS OF ASSIGNMENT

Section 2.1 Present Assignment and License Back. It is intended by Borrower that this Assignment constitute a present, absolute assignment of the Leases, Rents, Lease Guaranties and Bankruptcy Claims, and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 2.1, the Loan Agreement, the Security Instrument and the Clearing Account Agreement, Lender grants to Borrower a revocable (but only revocable by Lender's delivery of notice to Borrower during a continuing Event of Default) license to collect, receive, use and enjoy the Rents, as well as other sums due under the Lease Guaranties.

Section 2.2 Notice to Lessees. Borrower hereby authorizes and directs the lessees named in the Leases or any other future lessees or occupants of the Property and all Lease Guarantors to pay over to Lender, or to such other party as Lender directs, all Rents and all sums due under any Lease Guaranties, upon receipt from Lender of written notice to the effect that Lender is then the holder of this Assignment and that an Event of Default exists, and to continue so to do until otherwise notified by Lender.

Section 2.3 Incorporation by Reference. All representations, warranties, covenants, conditions and agreements contained in the Loan Agreement and the other Loan Documents, as the same may be modified, renewed, substituted or extended from time to time, are hereby made a part of this Assignment to the same extent and with the same force as if fully set forth herein.

ARTICLE 3 REMEDIES

Section 3.1 Remedies of Lender. Upon the occurrence and during the continuance of an Event of Default, upon notice delivered by Lender to Borrower, the license granted to Borrower in Section 2.1 of this Assignment shall automatically be revoked, and Lender shall immediately be entitled to possession of all Rents and all sums due under any Lease Guaranties, whether or not Lender enters upon or takes control of the Property, provided, however, upon Lender's acceptance of Borrower's cure of any Event of Default (which Lender shall in no way be obligated to accept), the license granted to Borrower pursuant to Section 2.1 shall automatically be reinstated. In addition, Lender may, upon the occurrence and during the continuance of an Event of Default, at its option, without waiving such Event of Default, upon notice, but without regard to the adequacy of the security for the Obligations, either in person or by agent, nominee or attorney, with or without bringing any action or proceeding, or by a receiver appointed by a court, dispossess Borrower and its agents and servants from the Property, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of the Property and all books, records and accounts relating thereto and have, hold, manage, lease and operate the Property on such terms and for such period of time as Lender may deem proper and either with or without taking possession of the Property in its own name, demand, sue for or otherwise collect and receive all Rents and all sums due under all Lease Guaranties, including, without limitation, those past due and unpaid with full power to make from time to time all required alterations, renovations, repairs or replacements thereto or thereof as Lender may deem proper, and may apply the Rents and sums received pursuant to any Lease Guaranties to the payment of the following in such

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order and proportion as Lender in its sole discretion may determine: (a) all reasonable, out-of-pocket expenses of managing and securing the Property, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees or agents as Lender may reasonably deem necessary or desirable and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water charges, sewer rents and any other liens, and premiums for all insurance which Lender may deem necessary, and the cost of all necessary alterations, renovations, repairs or replacements, and all reasonable out-of-pocket expenses incident to taking and retaining possession of the Property; and (b) the Obligations. In addition, upon the occurrence and during the continuance of an Event of Default, Lender, at its option, may (1) at Borrower's reasonable expense complete any construction on the Property in such manner and form as Lender reasonably deems advisable consistent with terms of any applicable lease, (2) exercise all rights and powers of Borrower with respect to the Leases, Property, Tenants and Rents, including, without limitation, the right to negotiate, execute, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents from the Property and all sums due under any Lease Guaranties, (3) either require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupancy of such part of the Property as may be in the possession of Borrower, or (4) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise.

Section 3.2 Other Remedies. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the power and rights granted to Lender hereunder shall be deemed to be a waiver by Lender of its rights and remedies under the Loan Agreement, the Note, or 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 the Debt and to enforce any other security therefor held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Borrower hereby absolutely, unconditionally and irrevocably waives any and all rights to assert any setoff, counterclaim or crossclaim of any nature whatsoever with respect to the Obligations of Borrower under this Assignment, the Loan Agreement, the Note, the other Loan Documents or otherwise with respect to the Loan in any action or proceeding brought by Lender to collect same, or any portion thereof, or to enforce and realize upon the lien and security interest created by this Assignment, the Loan Agreement, the Note, the Security Instrument, or any of the other Loan Documents (provided, however, that the foregoing shall not be deemed a waiver of Borrower's right to assert any mandatory or compulsory counterclaim if such counterclaim is compelled under local law or rule of procedure or Borrower's right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Lender in any separate action or proceeding).

Section 3.3 Other Security. Lender may take or release other security for the payment of the Debt, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the payment of the Debt without prejudice to any of its rights under this Assignment.

Section 3.4 Non-Waiver. The exercise by Lender of the option granted it in Section 3.1 of this Assignment and the collection of the Rents and sums due under the Lease

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Guaranties and the application thereof as provided herein and in the other Loan Documents shall not be considered a waiver of any Default or Event of Default by Borrower under the Note, the Loan Agreement, the Security Instrument, the Leases, this Assignment or the other Loan Documents. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (a) the failure of Lender to comply with any request of Borrower or any other party to take any action to enforce any of the provisions hereof or of the Loan Agreement, the Note or the other Loan Documents, (b) the release regardless of consideration, of the whole or any part of the Property, or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Loan Agreement, the Security Instrument, the Note or the other Loan Documents. Subject to applicable law, Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its sole discretion, may elect. Lender may take any action to recover the Debt, or any portion thereof, without prejudice to the right of Lender thereafter to enforce its rights under this Assignment. The rights of Lender under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

Section 3.5 Bankruptcy. (a) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Borrower a petition under the Bankruptcy Code, and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject such Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten (10) day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after Lender's notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

ARTICLE 4

NO LIABILITY, FURTHER ASSURANCES

Section 4.1 No Liability of Lender. This Assignment shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any Lease or Lease Guaranty or otherwise impose any obligation upon Lender. Lender shall not be

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liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after an Event of Default or from any other act or omission of Lender in managing the Property after an Event of Default unless such loss is caused by the gross negligence, willful misconduct or bad faith of Lender or any of its agents or contractors or any Indemnified Party. Lender shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or any Lease Guaranties or under or by reason of this Assignment and Borrower shall indemnify the Indemnified Parties for, and hold the Indemnified Parties harmless from the defense of any such claims or demands which may be asserted against any of the Indemnified Parties by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases or any Lease Guaranties, except to the extent attributable to the gross negligence, willful misconduct or bad faith of Lender or any of its agents or contractors or any Indemnified Party. Should the Indemnified Parties incur any such liability, the amount thereof, including reasonable costs, expenses and reasonable attorneys' fees actually incurred, shall be secured by this Assignment and by the Security Instrument and the other Loan Documents and Borrower shall reimburse such Indemnified Parties therefor in accordance with the terms of the Loan Agreement where applicable thereto within thirty (30) days of written demand. Subject to the terms and conditions of the Loan Agreement, this Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor for the carrying out of any of the terms and conditions of the Leases or any Lease Guaranties; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other parties, or for any dangerous or defective condition of the Property including, without limitation, the presence of any Hazardous Substances (as defined in the Environmental Indemnity), or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. The provisions of this Section 4.1 shall survive any payment or prepayment of the Loan and any foreclosure or satisfaction of the Security Instrument. Notwithstanding the foregoing, Borrower shall not be required to indemnify the Indemnified Parties for any liabilities, losses or damages arising out of circumstances, events, or a state of facts that first came into existence after the date Lender or its nominee actually acquired title to the Property by foreclosure, deed in lieu of foreclosure or a similar transaction, or the date on which the Obligations have been paid in full, whether at maturity, as a result of acceleration, or in connection with a defeasance in accordance with Section 2.8 of the Loan Agreement.

Section 4.2 No Mortgagee In Possession. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Lender.

Section 4.3 Further Assurances. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, conveyances, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require for the better assuring, conveying, assigning, transferring and confirming unto Lender the property and rights hereby assigned or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Assignment or for filing, registering or recording this Assignment and, promptly will execute and deliver and hereby authorizes Lender to file, to the extent Lender may lawfully do so, one or more financing

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statements to evidence more effectively the lien and security interest hereof in and upon the Leases, so long as the same shall not increase the Borrower's obligations or decrease the Borrower's rights under the Loan Documents (in either case, except to a de minimis extent).

ARTICLE 5 MISCELLANEOUS PROVISIONS

Section 5.1 Conflict of Terms. In case of any conflict between the terms of this Assignment and the terms of the Loan Agreement, the terms of this Assignment shall prevail as to any remedies set forth herein and otherwise the terms of the Loan Agreement shall prevail.

Section 5.2 No Oral Change. This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 5.3 General Definitions. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word "**Borrower**" shall mean "each Borrower and its successors and assigns, but only which assume the obligation of Borrower under the Loan Documents," the word "**Lender**" shall mean "Lender and any subsequent holder of the Note, the word "**Note**" shall mean "the Note and any other evidence of indebtedness secured by the Loan Agreement," the word "**Property**" shall include any portion of the Property and any interest therein, the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 5.4 Inapplicable Provisions. If any provision of this Assignment is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of this Assignment, such provision shall be fully severable and this Assignment shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Assignment, and the remaining provisions of this Assignment shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Assignment, unless such continued effectiveness of this Assignment, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

Section 5.5 Governing Law. THE PROVISIONS OF THIS ASSIGNMENT REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE

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PROPERTY IS LOCATED. ALL OTHER PROVISIONS OF THIS ASSIGNMENT, ANY CLAIM OR CONTROVERSY ARISING OUT OF THE SUBJECT MATTER HEREOF WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE, AND THE RIGHTS AND OBLIGATIONS OF BORROWER AND LENDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF, WITHOUT REGARD TO CHOICE OF LAW RULES, TO THE EXTENT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY, AND FURTHER, NOTWITHSTANDING THE FOREGOING, WITH RESPECT TO ANY PERSONAL PROPERTY INCLUDED IN THE "PROPERTY", THE CREATION OF THE SECURITY INTEREST THEREIN SHALL BE GOVERNED BY THE UNIFORM COMMERCIAL CODE IN EFFECT IN THE STATE OF NEW YORK FROM TIME TO TIME AND THE PERFECTION, THE EFFECT OF PERFECTION OR NON-PERFECTION AND PRIORITY OF SUCH SECURITY INTEREST SHALL BE GOVERNED IN ACCORDANCE WITH THE MANDATORY CHOICE OF LAW RULES SET FORTH IN THE UNIFORM COMMERCIAL CODE IN EFFECT IN THE STATE OF NEW YORK FROM TIME TO TIME.

Section 5.6 Termination of Assignment. Upon payment in full of the Obligations, this Assignment shall become and be void and of no effect.

Section 5.7 Notices. All notices or other written communications hereunder shall be delivered in accordance with Section 15.5 of the Loan Agreement.

Section 5.8 Waiver of Trial by Jury. **BORROWER HEREBY, AND LENDER BY ACCEPTANCE HEREOF, EACH AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS ASSIGNMENT OR ANY OTHER LOAN DOCUMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF BORROWER AND LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER PARTY.**

Section 5.9 Exculpation. The provisions of Article 12 of the Loan Agreement are hereby incorporated by reference into this Assignment to the same extent and with the same force as if fully set forth herein.

Section 5.10 Successors and Assigns. This Assignment shall be binding upon and shall inure to the benefit of Borrower and Lender and their respective successors and permitted assigns having an interest in the Loan forever. Lender shall have the right to sell, assign, pledge, transfer or delegate, as applicable, to one Person, all of its rights and obligations under this Assignment and the other Loan Documents in connection with any assignment of the Loan and the Loan

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Documents. Any assignee or transferee of Lender shall be entitled to all the benefits afforded to Lender under this Assignment. Borrower shall not have the right to assign, delegate or transfer its rights or obligations under this Assignment without the prior written consent of Lender, as provided in the Loan Agreement, and any attempted assignment, delegation or transfer without such consent shall be null and void.

Section 5.11 Headings, Etc. The headings and captions of the various paragraphs of this Assignment are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 5.12 Joint and Several. If more than one Person has executed this Assignment as "Borrower," the representations, covenants, warranties and obligations of all such Persons hereunder shall be joint and several.

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IN WITNESS WHEREOF, this Assignment has been executed by Borrower as of the day and year first above written.

BORROWER:

**DIGITAL ELK GROVE 1, LLC,
DIGITAL ELK GROVE 3, LLC,**
each a Delaware limited liability company

By: 
Name: Matt Mercier
Title: Authorized Signatory

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 CALIFORNIA

COUNTY OF SAN FRANCISCO

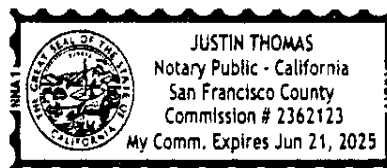
On June 13th, 2023 before me, JUSTIN THOMAS, NOTARY PUBLIC (insert name and title of the officer), personally appeared MATT MERCIER, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their 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 California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

(Seal)



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EXHIBIT A

LEGAL DESCRIPTION

**2200 BUSSE ROAD
ELK GROVE VILLAGE, ILLINOIS 60007**

PARCEL 1:

LOT 2 IN DIPPER VENTURES LLC RESUBDIVISION, BEING A RESUBDIVISION IN THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 2, 2017 AS DOCUMENT 1703345036, IN COOK COUNTY ILLINOIS.

PARCEL 2:

A PERPETUAL EASEMENT FOR THE BENEFIT OF PARCEL 1 TO ACCESS, USE, OPERATE, INSPECT, MAINTAIN, REPAIR AND REPLACE UP TO FOUR (4) FIBER CONDUITS AND THE PORTIONS OF THE TELECOMMUNICATION FACILITIES ASSOCIATED WITH THE FOUR (4) FIBER CONDUITS CREATED BY THE RECIPROCAL EASEMENT AGREEMENT RECORDED JUNE 25, 2015 AS DOCUMENT NO. 1517619128, AS AMENDED AND RESTATED BY AMENDED AND RESTATED RECIPROCAL EASEMENT AGREEMENT RECORDED 7-17, 2023 AS DOCUMENT NO. *, IN THE LOCATIONS AS MORE PARTICULARLY SHOWN ON THE "CH2 DRAWING" ATTACHED THERETO. * 2319857014

PARCEL 3:

A PERPETUAL, NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 UPON AND ACROSS THE "DEG 3 EASEMENT AREA" TO (A) PROVIDE ACCESS FOR MOTOR VEHICLE AND PEDESTRIAN TRAFFIC TO AND FROM PARCEL 1, THE "DEG 3 PROPERTY" AND THE PUBLIC ROADWAYS COMMONLY KNOWN AS ARTHUR AVENUE AND DEVON AVENUE AND (B) TO ALLOW FOR PARKING OF MOTOR VEHICLES IN DESIGNATED PARKING AREAS IN THE "DEG 3 EASEMENT AREA" CREATED BY THE RECIPROCAL EASEMENT AGREEMENT RECORDED 7-7-2023 AS DOCUMENT NO. 2319857013 IN THE LOCATIONS AS MORE PARTICULARLY SHOWN ON EXHIBIT "D" THERETO.

C/K/A 2200 BUSSE ROAD, ELK GROVE VILLAGE, IL 60007

P.I.N. 08-34-402-061-0000

UNOFFICIAL COPY

**1400 EAST DEVON AVENUE
ELK GROVE VILLAGE, IL 60007**

PARCEL 1:

LOT 1 IN DIPPER VENTURES LLC RESUBDIVISION, BEING A RESUBDIVISION IN THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 2, 2017 AS DOCUMENT 1703345036, IN COOK COUNTY ILLINOIS.

PARCEL 2:

A PERPETUAL EASEMENT FOR THE BENEFIT OF PARCEL 1 TO ACCESS, USE, OPERATE, INSPECT, MAINTAIN, REPAIR AND REPLACE UP TO FOUR (4) FIBER CONDUITS AND THE PORTIONS OF THE TELECOMMUNICATION FACILITIES ASSOCIATED WITH THE FOUR (4) FIBER CONDUITS CREATED BY THE RECIPROCAL EASEMENT AGREEMENT RECORDED JUNE 25, 2015 AS DOCUMENT NO. 1517619128, AS AMENDED AND RESTATED BY AMENDED AND RESTATED RECIPROCAL EASEMENT AGREEMENT RECORDED 7-17, 2023 AS DOCUMENT NO. *, IN THE LOCATIONS AS MORE PARTICULARLY SHOWN ON THE "CH2 DRAWING" ATTACHED THERETO. # 2319857014

PARCEL 3:

A PERPETUAL, NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 UPON AND ACROSS THE "DEG 1 EASEMENT AREA" TO (A) PROVIDE ACCESS FOR MOTOR VEHICLE AND PEDESTRIAN TRAFFIC TO AND FROM PARCEL 1, THE "DEG 1 PROPERTY" AND THE PUBLIC ROADWAYS COMMONLY KNOWN AS ARTHUR AVENUE AND DEVON AVENUE AND (B) TO ALLOW FOR PARKING OF MOTOR VEHICLES IN DESIGNATED PARKING AREAS IN THE "DEG 1 EASEMENT AREA" CREATED BY THE RECIPROCAL EASEMENT AGREEMENT RECORDED 7-17-2023 AS DOCUMENT NO. 2319857013 IN THE LOCATIONS AS MORE PARTICULARLY SHOWN ON EXHIBIT "C" THERETO.

C/K/A/ 1400 EAST DEVON AVENUE, ELK GROVE VILLAGE, IL 60007

P.I.N.(s) 08-34-402-060-0000 AND 08-34-402-062-0000