

2024-520153  
06/21/2024 11:00 AM  
TOTAL FEES: 25.00  
BY: SP  
PG #: 14  
RECORDED AS PRESENTED

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD  
GINA PIMENTEL  
RECORDER

IN2309071C

## COLLATERAL ASSIGNMENT OF LEASES AND RENTS

(SBA Loan No. 58526291-07)

**THIS COLLATERAL ASSIGNMENT OF LEASES AND RENTS** is made as of the 17th day of June, 2024, by **Apex 2024 LLC**, an Indiana limited liability company with its principal place of business located at 8210 Louisiana Street, Merrillville, Indiana (the "Assignor") to **Shoreham Bank**, a federal savings bank with a place of business located at One Shoreham Way, Warwick, Rhode Island (the "Assignee").

### PURPOSE

Contemporaneously herewith, the Assignor has executed and delivered to the Assignee the Assignor's Note in the principal sum of Three Million Four Hundred Thousand Dollars (\$3,400,000) (said note and all modifications and amendments thereto and extensions and renewals thereof, shall hereinafter be referred to as the "Note").

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As security for the Note and for all other obligations of the Assignor to the Assignee of every kind, whether now existing or hereafter arising during the term hereof (collectively, the "Obligations"), the Assignor has executed and delivered to the Assignee this Collateral Assignment of Leases and Rents.

**NOW, THEREFORE**, for value received and as security for the payment of the Obligations, the Assignor, for itself and for its heirs, successors and assigns, as appropriate, does hereby transfer, assign and deliver unto the Assignee, its successors and assigns, and grant a security interest in, all of the right, title and interest of the Assignor in and to (i) all leases, subleases and tenancies, whether written or oral, now or hereafter existing with respect to any portion or portions of the premises owned by the Assignor in the City of Merrillville, Indiana, situated at 8210 Louisiana Street, which premises may be more particularly described in Exhibit A annexed hereto, together with all buildings and improvements now or hereafter constructed thereon (all of such premises being hereinafter collectively referred to as the "Premises"), together with any renewals or extensions thereof and leases, subleases and tenancies in substitution therefor (all of which are hereinafter collectively referred to as the "Assigned Leases"), (ii) all rents, hotel revenue and other payments of every kind due or payable and to become due or payable to the Assignor, its successors and assigns, by virtue of the Assigned Leases, or otherwise due or payable and to become due and payable to the Assignor, its successors and assigns, as the result of any use, possession, or occupancy of any portion or portions of the Premises, including, but not limited to, security deposits, tax or operating expense escalation payments, percentage rent, additional rent, or any other payments arising from any license, use permit or

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concession, (iii) all right, title and interest of Assignor in and to any and all guaranties of the Assigned Leases, and (iv) any awards which may be made in respect of the Assignor's interest in any of the Assigned Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court.

TO HAVE AND TO HOLD the Assigned Leases and said rents and other payments, together with all the rights, privileges and appurtenances now or hereafter in any way arising therefrom or pertaining thereto, unto the Assignee, its successors and assigns, forever, subject, however, to the terms and conditions as hereinafter provided.

1. The Assignor does hereby authorize and empower the Assignee to collect said rents and other payments as the same shall become due, and does hereby direct each and all of the lessees, sublessees, tenants or other occupants of the Premises to pay to the Assignee, upon demand by the Assignee, such rents and other payments as may now be due or payable and/or shall hereafter become due or payable; provided, however, that it is understood and agreed by and between the Assignor and the Assignee that no such demand shall be made unless and until there shall have been an Event of Default (as defined under the Obligations) (an "Event of Default"), and that, until such demand is made, the Assignor shall be authorized to collect or continue to collect said rents and other payments; and provided, further, that the Assignor's right to collect or to continue to collect such rents and other payments, as aforesaid, shall not authorize collection by the Assignor of any installment of rent more than one (1) month in advance of the respective dates prescribed in the Assigned Leases for the payment thereof without the written consent of the Assignee.

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2. The Assignor does hereby constitute and appoint the Assignee, upon the occurrence of an Event of Default and while this Assignment remains in force and effect, irrevocably, and with full power of substitution and revocation, its true and lawful attorney, for it and in its name, place and stead, (a) to demand and receive any and all of said rents or other payments and to give any form of release, receipt or acquittance which may be required for the purpose; (b) to compromise and adjust any matters of dispute with any lessee, sublessee, tenant or other occupant of any portion of the Premises, including, without limitation, said rents or other payments, after ten (10) days' prior written notice to the Assignor of any such dispute; (c) to give all such assurances, acquittances, discharges and other instruments as such lessee, sublessee, tenant or other occupant may require for said rents or other payments, or any part thereof; and (d) to appear in any bankruptcy, insolvency or reorganization action in respect of the Assignor's interest in any of the Assigned Leases and/or to collect any awards or payments which may be made in respect thereof. And the Assignor does hereby grant unto its said attorney full power and authority to do and perform each and every act whatsoever requisite to be done in and about the Premises, as fully, to all intents and purposes, as it could do if personally present, hereby ratifying and confirming all that its said attorney or its substitute shall lawfully do or cause to be done by virtue hereof.

3. Any funds received by the Assignee under this Assignment shall be first applied to the payment of all fees, expenses (including the fees of counsel to the Assignee) and other amounts due to the Assignee (excluding principal and interest), then to accrued interest under the Obligations, and the balance on account of outstanding principal under the Obligations; provided, however, that after the

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occurrence of an Event of Default, payments will be applied to the Obligations as the Assignee determines in its sole discretion. Any of such funds remaining after such application shall be paid as soon as reasonably practicable by the Assignee to the Assignor.

4. The Assignor, for itself and for its successors and assigns, covenants and warrants as follows:

(a) that each of the Assigned Leases now or hereafter in effect is and shall be a valid and subsisting lease and that there are and shall be, to the extent ascertainable by the Assignor, no defaults on the part of any of the parties thereto;

(b) that the Assignor has not sold, assigned, transferred, mortgaged or pledged any of the rents, issues or profits from the Premises or any part thereof, whether now or hereafter to become due, to any person, firm or corporation other than the Assignee;

(c) that no rents, issues or profits of the Premises, or any part thereof, becoming due subsequent to the date hereof have been collected (except as provided in Section 1 hereof) nor has payment of any of the same been anticipated, waived, released, discounted or otherwise discharged or compromised;

(d) that it will furnish to the Assignee, on demand, true copies of all Assigned Leases hereafter executed and true copies of each document effecting the renewal, amendment or modification of any Assigned Lease;

(e) that it will not assign, pledge or otherwise encumber any of the Assigned Leases or any of the rents thereunder unless the prior written consent of the Assignee shall have been obtained thereto and unless the instrument creating such

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assignment, pledge or encumbrance shall expressly state that the same is subject to this Assignment;

(f) that it will not cancel, terminate, or accept any surrender of any of the Assigned Leases, or amend or modify the same, directly or indirectly in any respect whatsoever, without in each case having obtained the prior written consent of the Assignee thereto;

(g) that it will not waive or give any consent with respect to any default or variation in the performance of any of the terms, covenants and conditions on the part of any lessee, sublessee, tenant or other occupant to be performed under any of the Assigned Leases, but will at all times take proper steps to enforce all of the provisions and conditions thereof;

(h) that it will not collect or receive from any such lessee, sublessee, tenant or other occupant more than one (1) month's rent in advance of the rent stipulated to be paid under the applicable lease, without in each case having obtained the prior written consent of the Assignee thereto; and that it will not agree or permit that any debt or amount owed to any lessee, sublessee, tenant or other occupant may be setoff or applied against rents or other sums due to Assignor in connection with the Premises;

(i) that it will perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions on its part to be performed and observed with respect to each of the Assigned Leases; and

(j) that it will, upon written request by the Assignee, while this Assignment remains in force and effect, serve such written notices upon lessee,

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sublessee, tenant or other occupant of any portion of the Premises concerning this Assignment, or include among the written provisions of any instrument hereafter creating any such lease, sublease, tenancy or right of occupancy specific reference to this Assignment, and make, execute and deliver all such powers of attorney or instruments of pledge or assignment as the Assignee may reasonably request at any time for the purpose of securing its rights hereunder.

5. Upon the payment in full of all Obligations of the Assignor and the cancellation and discharge of said indebtedness and the mortgage securing the same, this Assignment shall become null and void, and thereupon the Assignee shall execute and deliver to the Assignor any instruments which may be necessary or appropriate to terminate this Assignment and to notify any of such lessees, sublessees, tenants or other occupants of such termination.

6. The Assignor further covenants and agrees to and with the Assignee, its successors and assigns, that the acceptance of this Assignment shall not constitute a satisfaction of any indebtedness, liability or obligation, or any part thereof, now or hereafter owed by the Assignor to the Assignee, except to the extent of amounts actually received and applied by the Assignee on account of the same; that nothing in this Assignment contained shall be deemed to obligate the Assignee to undertake or continue collection of rents or other payments due or to become due under the Assigned Leases or otherwise with respect to the Premises or to undertake or continue performance of the obligations of the Assignor under any of the Assigned Leases, or to take any measures, legal or otherwise, to enforce collection of any of said rents or other payments; that notwithstanding the acceptance of this Assignment and collection of said

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rents and other payments hereunder, the Assignee may institute summary dispossession proceedings, sell, realize upon or otherwise deal with any other security, guaranty or collateral at any time held by it and otherwise exercise any of its rights and powers under any documents evidencing the Obligations or security for same, or otherwise, in such manner as it may deem advisable, at any time it shall see fit to do so, and for any cause for which the same might have been instituted or done had this Assignment not been made, and that no waiver or condonation of any breach or default and no waiver of any right of the Assignee hereunder shall be deemed to constitute a waiver of any other or subsequent breach or default, or to prevent subsequent exercise of any such right or any other similar right.

7. The Assignor hereby agrees to indemnify and hold the Assignee harmless against and from (a) any and all liability, loss, damage and expense, including attorneys' fees, which it may or shall incur or which may be asserted under or in connection with this Assignment or any of the Assigned Leases, or by reason of any action taken by the Assignee under any of the Obligations (including without limitation any action which the Assignee in its discretion may take to protect its interest in the Premises), and (b) any and all claims and demands whatsoever which may be incurred by or asserted against the Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants and conditions contained in any of the Assigned Leases.

8. Should the Assignee incur any such liability as described in Section 7, the amount thereof, together with interest thereon at the rate charged on the Obligations, shall be payable by the Assignor to the Assignee immediately upon demand, or at the



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option of the Assignee, the Assignee may reimburse itself therefor out of any rents, issues or profits of the Premises collected by the Assignee.

9. Any notice, demand, request or other communication given hereunder or in connection herewith (hereinafter "Notices") shall be deemed sufficient if in writing and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the party to receive such Notice at its address first set forth above, or if to a party to an Assigned Lease to its address set forth therein, or at such other address as such party may hereafter designate by Notice given in like fashion. Notices shall be deemed given when mailed. Notwithstanding the foregoing, routine communications such as ordinary distribution checks, copies of documents, etc. may be sent by ordinary first-class mail.

10. (a) Whenever the context so requires, reference herein to the neuter gender shall include the masculine and/or feminine gender, and the singular number shall include the plural.

(b) This Assignment shall be construed and enforced in accordance with and governed by the laws of the State of Indiana.

(c) No change, amendment, modification, cancellation or discharge hereof, or of any part hereof, shall be valid unless the Assignee shall have consented thereto in writing.

(d) In the event there is any conflict between the terms and provisions of the mortgage securing the Obligations and the terms and provisions of this Assignment, the terms and provisions of this Assignment shall prevail.

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(e) The terms, covenants, and conditions contained herein shall inure to the benefit of, and bind the Assignee and the Assignor and their respective successors and assigns or heirs, executors, administrators, successors and assigns, as the case may be.

(f) The Assignor hereby irrevocably authorizes the Assignee at any time and from time to time to file a Financing Statement and any amendments thereto that (a) indicate the Assigned Leases and said rents and other payments, together with all the rights, privileges and appurtenances now or hereafter in any way arising therefrom or pertaining thereto (the "Collateral") as certain assets of the Assignor or words of similar effect, regardless of whether any particular asset comprising a portion of the Collateral is within the scope of Article 9 of the Uniform Commercial Code in effect in the State in which the Collateral is located (the "Code"), and (b) contain any other information required by Part 5 of Article 9 of the Code for the sufficiency, or filing office acceptance, of any Financing Statement or amendment thereto. The Assignor shall furnish any such information to the Assignee promptly upon request. The Assignor also hereby ratifies its authorization for the Assignee to have filed any like Financing Statements or amendments thereto if filed prior to the date hereof.

(g) This Assignment includes all rights conferred by Ind. Code § 32-21-4-2 and § 32-29-1-11, and this Assignment hereby creates, and the Assignor hereby grants, a security interest and lien to the Assignee in the Assigned Leases and rents and other payments described above that will be perfected upon the recording of this Assignment. Such assignment shall run with the Premises and be good and valid as against the Assignor and those claiming by, under or through the Assignor, from the

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date of recording of this Assignment. Such assignment shall continue to be operative during the foreclosure or any other proceedings taken to enforce this Assignment. Such assignment does not and shall not be construed as obligating the Assignor or any of its successors or assigns to perform any of the covenants or undertakings required to be performed by the Assignor in any Assigned Leases.

11. *The loan secured by this lien was made under a United States Small Business Administration ("SBA") nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:*

*(a) When SBA is the holder of the Note, this document and all documents evidencing or securing the loan will be construed in accordance with federal law.*

*(b) Assignee or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No borrower or guarantor may claim or assert against SBA any local or state law to deny any obligation of Assignor, or defeat any claim of SBA with respect to this loan.*

*Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.*

[Signature Page Follows]

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IN WITNESS WHEREOF, this Assignment is executed by the Assignor, through its duly authorized member, as of the day and year first above written.

Apex 2024 LLC

By: \_\_\_\_\_

Dhruv Dilipkumar Patel,  
Authorized Member

STATE OF Illinois  
COUNTY OF Cook

In Chicago, Illinois on this 14<sup>th</sup> day of June, 2024, before me personally appeared Dhruv Dilipkumar Patel, Authorized Member of Apex 2024 LLC, proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, or personal knowledge of the undersigned, to be the party executing the foregoing instrument and he acknowledged said instrument, by him executed to be his free act and deed and the free act and deed of Apex 2024 LLC.

SEAL:

"OFFICIAL SEAL"  
NICOLE M DOSAMANTES  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 4/27/2027

Signed: \_\_\_\_\_

Printed or Typed Name: Nicole M. Dosamantes

My Commission expires: 4/27/2027

My County of residence: Cook

My Commission number: 970837

I affirm under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. Robert A. Migliaccio, Esq.

This instrument prepared by, and after recording return to: Robert A. Migliaccio, Esq., Cameron & Mittleman LLP, 301 Promenade Street, Providence, Rhode Island 02908.

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## EXHIBIT A

**For APN/Parcel ID(s): 45-12-22-426-001.000-030**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MERRILLVILLE, COUNTY OF LAKE, STATE OF INDIANA AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 (FEE):

PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 35 NORTH, RANGE 8 WEST OF THE 2ND P.M. LYING SOUTH OF THE SOUTHERLY LINE OF THE I-65 EXIT RAMP, LAKE COUNTY, INDIANA, DESCRIBED AS BEGINNING AT A POINT ON SAID SOUTHERLY LINE AND 1029.00 FEET WEST OF THE EAST FINE OF SAID SECTION 22 (MEASURED PERPENDICULAR); THENCE SOUTH AND PARALLEL WITH SAID EAST LINE, 395.88 FEET, THENCE SOUTH 63 DEGREES 58 MINUTES 17 SECONDS EAST 87.78 FEET; THENCE SOUTHERLY ALONG A CIRCULAR CURVE WHICH IS CONVEX TO THE WEST WHOSE RADIUS = 180.00 FEET, TANGENT = 41.57 FEET, DEFLECTION ANGLE = 26 DEGREES 00 MINUTES 20 SECONDS, A DISTANCE OF 81.69 FEET ALONG SAID CURVE; THENCE SOUTH 00 DEGREES 01 MINUTE 23 SECONDS WEST, 12.33 FEET; THENCE NORTH 89 DEGREES 58 MINUTES 37 SECONDS WEST, 350.00 FEET TO A POINT LYING 15.00 FEET EAST OF THE WEST FINE OF SAID EAST HALF (MEASURED PERPENDICULAR); THENCE NORTH 00 DEGREES 01 MINUTES 23 SECONDS EAST AND PARALLEL WITH SAID WEST LINE, 409.95 FEET TO SAID SOUTHERLY LINE; THENCE EASTERLY ALONG SAID SOUTHERLY LINE ALONG A CIRCULAR CURVE WHICH IS CONVEX TO THE NORTH WHOSE RADIUS = 722.27 FEET, TANGENT = 159.49 FEET, DEFLECTION ANGLE = 24 DEGREES 54 MINUTES 14 SECONDS, A DISTANCE OF 313.94 FEET ALONG SAID CURVE TO THE POINT OF BEGINNING, BEING A PART OF PARCEL 1, WESTLAKE PLAZA, AS SHOWN IN PLAT BOOK 47, PAGE 77, IN LAKE COUNTY, INDIANA, AND AS AMENDED IN CERTIFICATES OF CORRECTION RECORDED AUGUST 10, 1977, AS DOCUMENT NOS. 422236 AND 422237, AND IN CERTIFICATE OF CORRECTION RECORDED AUGUST 29, 1977, AS DOCUMENT NO. 425494, EXCEPT THAT PART DESCRIBED AS FOLLOWS:

PART OF THE EAST HALF OF THE SOUTHEAST QUARTER SECTION 22, TOWNSHIP 35 NORTH, RANGE 8 WEST OF THE 2ND PRINCIPAL MERIDIAN, LYING SOUTH OF THE SOUTHERLY LINE OF THE I-65 EXIT RAMP, LAKE COUNTY, INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF I-65 AND 1029.00 FEET WEST OF THE EAST LINE OF SECTION 22 (MEASURED PERPENDICULARLY); THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT BEING THE SOUTHERLY RIGHT-OF-WAY LINE OF THE I-65 EXIT RAMP A DISTANCE OF 161.36 FEET, HAVING A RADIUS OF 722.27 FEET AND A DELTA ANGLE OF 12 DEGREES 48 MINUTES 02 SECONDS WITH A CHORD BEARING SOUTH 74 DEGREES 16 MINUTES 12 SECONDS WEST AND A LENGTH OF 161.03 FEET; THENCE SOUTH A DISTANCE OF 301.84 FEET; THENCE EAST A DISTANCE OF 91.50 FEET; THENCE SOUTH A DISTANCE OF 32.50 FEET; THENCE EAST A DISTANCE OF 63.50 FEET TO A POINT ON THE COMMON BOUNDARY OF THE LUCKY STEER STEAK HOUSE AND THE LA QUINTA MOTOR INN TRACT; THENCE NORTH A DISTANCE OF 378.00 FEET ALONG THE SAID COMMON BOUNDARY TO THE POINT OF BEGINNING, BEING A PART OF PARCEL 1 IN WEST LAKE PLAZA, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 47, PAGE 77, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA, AND AS AMENDED BY CERTIFICATES OF CORRECTION RECORDED AUGUST 10, 1977, AS DOCUMENT NO. 422236 AND 422237 AND CERTIFICATE OF CORRECTION RECORDED AUGUST 29, 1977, AS DOCUMENT NO. 425494.

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**PARCEL 2 (EASEMENT):**

**EASEMENT ESTATE APPURTENANT TO PARCEL 1 CREATED BY COMMON-ACCESS AND CROSS-PARKING EASEMENT AGREEMENT DATED JUNE 7, 1990, AND RECORDED JUNE 29, 1990, AS DOCUMENT NO. 109458, MADE BY AND BETWEEN L.Q. JOINT VENTURE #800, A TEXAS JOINT VENTURE, COMPOSED OF LA QUINTA MOTORS INNS, INC., A TEXAS CORPORATION AND THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, A NEW JERSEY CORPORATION, AND THE GREAT WESTERN, INC., AN INDIANA CORPORATION.**

Property of Lake County Recorder