

Upon recording, return to:

Missoula Expressway Hotel, LLC
Attn: Derek Ence
PO Box 1491
Idaho Falls, ID 83403

**EASEMENT and
RIGHT OF FIRST REFUSAL AGREEMENT**

THIS EASEMENT and RIGHT OF FIRST REFUSAL AGREEMENT (“**Agreement**”) is made this 5th day of July, 2023 (the “**Effective Date**”), by Missoula Expressway Hotel, LLC, a Montana limited liability company (“**MEH**”), with an address of P.O. BOX 1491, Idaho Falls, Idaho 83403 attn: Derek Ence, and Lincoln Capital Group, LLC, a Montana limited liability company (“**LINCOLN**”), with an address of 3101 S. Russell St., Missoula, MT 59801-6872 attn: Grant Lincoln. MEH and LINCOLN may be referred to hereafter individually as a “**Party**” or collectively as the “**Parties**”.

RECITALS:

A. WHEREAS, MEH purchased from LINCOLN two contiguous parcels of real property (collectively the “**MEH Parcel**”) described as follows:

Lots 26 and 27 of Grant Creek Center Phase II, a platted subdivision in the City of Missoula, Missoula County, Montana, according to the official recorded plat thereof.

Consisting of approximately 2.71 acres.

Tax ID Nos. 5845162 and 5845175

B. WHEREAS, LINCOLN is the owner of two contiguous parcels of real property located immediately north of the MEH Parcel and south of Schramm Street, Missoula, Montana (collectively, the “**Lincoln Parcel**”) described as follows:

Tract 1 of Certificate of Survey No. 4374, located in the SE1/4 SE1/4 of Section 6, Township 13 North, Range 19 West, P.M.M., Missoula County, Montana, and

Portion A of Certificate of Survey No. 5594, located in the SE1/4 SE1/4 of Section 6, Township 13 North, Range 19 West, P.M.M., Missoula County, Montana

Tax ID Nos. 3258409

C. WHEREAS, LINCOLN desires to acquire, and MEH is willing to grant, an access and utility easement across the MEH Parcel for the benefit of the Lincoln Parcel, subject to the terms and conditions hereinafter set forth; and

D. WHEREAS, MEH desires to obtain, and LINCOLN is willing to grant, a right of first refusal for the purchase of the Lincoln Parcel, subject to the terms and conditions set forth herein (the "ROFR").

AGREEMENT:

NOW, THEREFORE, in consideration of the terms of this Agreement and the mutual undertakings and agreements hereinafter contained, and the recitals above, LINCOLN and MEH hereby agree and declare as follows:

ARTICLE I
ACCESS AND UTILITY EASEMENTS

1.1 Access Easement. MEH hereby grants, bargains, sells and conveys to LINCOLN, its successors and assigns, a perpetual, nonexclusive easement for vehicular and pedestrian access, ingress and egress by LINCOLN and its personnel, tenants, occupants, mortgagees, invitees, licensees, customers and contractors (collectively "**Lincoln Invitees**") from Expressway Boulevard to the Lincoln Parcel (and no other property) and from the Lincoln Parcel (and no other property) to Expressway Boulevard upon, over, and across the MEH Parcel (the "**Access Easement**") as follows: (1) until the MEH Parcel is improved to include driveways, roadways, approaches, and paved surfaces ("**Predevelopment**"), the Access Easement shall be across the westernmost part of the MEH Parcel, limited to forty (40) feet measured from the west boundary of the MEH Parcel, used as is reasonably necessary for LINCOLN for purposes of developing the Lincoln Parcel, and (2) provided that MEH has completed its driveways, roadways, approaches, and paved surfaces on the MEH Parcel for commercial purposes on or before the two-year anniversary of the Effective Date ("**Improvement Completion Date**"), the Access Easement shall then be restricted to those driveways, approaches, and roadways as actually constructed by MEH ("**Access Improvements**"). MEH shall allow connection to its completed Access Improvements by at least one opening to the Lincoln Parcel twenty-six (26) feet in width, and one opening onto Expressway Boulevard twenty-six (26) feet in width, connected by a roadway at least twenty-six (26) feet wide, the route and openings to be determined by MEH, in its discretion. MEH may impose reasonable regulations for vehicle access over the MEH Parcel, including without limitation speed and traffic control and signage. In the event that the Access Improvements are not completed prior to the Improvement Completion Date then Lincoln, at Lincoln's expense, may construct Access Improvements within the Predevelopment Access Easement area to allow connection to the Lincoln Parcel by at least one opening onto Expressway Boulevard twenty-six (26) feet in width, connected by a roadway at least twenty-six (26) feet wide, the route and openings

to be determined by Lincoln, in its discretion. Lincoln may impose reasonable regulations for vehicle access over the Access Easement, including without limitation speed and traffic control and signage. Notwithstanding the foregoing, at MEH's expense, MEH may move, relocate, and alter the Lincoln's Access Improvements as long as: (1) the relocation or movement by MEH complies with all necessary requirements of, and receives all necessary approvals by, the governing municipal authorities; and such movement or relocation does not impact the prior approvals by the governing municipal authorities that have been received by Lincoln (2) MEH preserves the opening to the Lincoln Parcel twenty-six (26) feet in width established by Lincoln; and (3) provides one opening onto Expressway Boulevard twenty-six (26) feet in width, connected by a roadway at least twenty-six (26) feet wide, the route and openings to be determined by MEH, in its discretion

By way of illustration only, attached hereto as Attachment "A" is a preliminary conceptual site plan depicting a hotel development with parking and roadways. Such illustration shall not be binding upon the parties but is intended to provide an example of potential development on the MEH Parcel and the roadways that could serve as the Access Improvements. Nothing herein shall be construed to require MEH to develop the MEH Parcel according to Attachment A, and the parties acknowledge and understand that any development on the MEH Parcel may diverge from what is shown on Attachment A. However, to the extent that the MEH Parcel is developed, at least one roadway shall provide access to and from the Lincoln Parcel across the MEH Parcel to serve as the Access Easement in a similar manner as shown on Attachment A as MEH determines in its discretion.

1.2 Utility Easement. MEH hereby grants, bargains, sells and conveys to LINCOLN, its successors and assigns and the Lincoln Invitees a perpetual, nonexclusive easement (the "**Utilities Easement**") for installation, reconstruction, relocation, repair, replacement, maintenance, operation, inspection and patrol of underground utilities to provide service to the Lincoln Parcel ("**Utility Improvements**"), and the utilities permitted on the Utilities Easement shall include facilities for electric distribution or transmission, gas distribution or transmission, telephone and other telecommunications facilities, water supply or distribution systems, sewer and drainage systems, broad band internet systems, and cable transmission systems, by LINCOLN and its tenants, occupants, mortgagees, invitees, licensees, customers and contractors from Expressway Boulevard to the Lincoln Parcel under the MEH Parcel as follows: (1) Predevelopment such easement shall be restricted to the westernmost ten (10) feet from the west boundary of the MEH Parcel, and all Utility Improvements shall be temporary except as MEH shall reasonably agree otherwise, and (2) provided that MEH develops Access Improvements on the MEH Parcel prior to the Improvement Completion Date, then such Utilities Easement and Lincoln's Utility Improvements shall be restricted to those Access Improvements as are actually constructed by MEH. Any Utility Improvements by LINCOLN shall not interfere with MEH's utility installation or interfere unreasonably with MEH's use of the Property. If MEH does not develop Access Improvements on the MEH Parcel prior to the Improvement Completion Date, then Lincoln may construct and develop its own Utility Improvements

within the Predevelopment Utilities Easement area. Except as provided below, any subsequent Utility Improvements by MEH shall not interfere with Lincoln's utility installation or interfere unreasonably with use of the Property by Lincoln or any successor in interest to the Lincoln Parcel. Notwithstanding the foregoing, at MEH's expense, MEH may move, relocate, and alter Lincoln's Utility Improvements as long as the Lincoln Parcel receives the same utility service and coverage as before such move, relocation, or alteration.

1.3 Surface structures required to service the utilities installed on the Utilities Easement shall be positioned to minimally disrupt MEH's and successor's use of the MEH Parcel and only after consultation with MEH or its successor in interest to the MEH Parcel. All installations, maintenance, and repairs to Utility Improvements shall be carried out diligently and in a manner which does not unreasonably impair access to the MEH Parcel, either before or after the Improvement Completion Date. All costs incurred in connection with the installation, maintenance and repair of utilities servicing the Lincoln Parcel shall be borne by LINCOLN, and any disturbance of improvements or surface conditions on the MEH Parcel by LINCOLN or related to the utilities servicing the Lincoln Parcel shall be restored by LINCOLN to their condition prior to such disturbance at LINCOLN's expense.

1.4 The easements granted under this Article shall be referred to herein as the "Easement". The Easement shall comply with this Agreement and any applicable permits and approvals of the governing municipality, and shall be subject to all existing easements, encumbrances, and restrictions of record. The Easement shall burden the MEH Parcel and shall be for the benefit of and be appurtenant to the Lincoln Parcel and run with the Lincoln Parcel. Any portion of the MEH Parcel subject to the easements created in this Section may be individually referred to hereinafter as an "Easement Area" or collectively as the "Easement Areas" as appropriate under the circumstances.

1.5 Within twelve (12) months of the Effective Date, MEH will develop and provide to Lincoln civil drawings and plans that establish the location and dimensions of the Access Improvements and Utility Improvements for development of the MEH Parcel. At such time or any other time, MEH and LINCOLN may agree to cooperate with respect to constructing the Access Improvements and Utility Improvements and may agree to share costs and benefits with respect to them. Any such agreement shall be in a written agreement between the Parties and recorded with the Missoula County recorder's office. Should MEH not provide Lincoln the civil drawings and plans as contemplated herein and MEH has not constructed the Access Improvements or Utility Improvements as contemplated in paragraphs 1.1 and 1.2 above, Lincoln may proceed to construct Access Improvements within the Access Easement, and Utility Improvements within the Utility Easement, for Lincoln's use of the Lincoln Parcel, conditioned on Lincoln complying with all necessary requirements of, and obtaining all necessary approvals by, the governing municipal authorities. MEH, in its discretion and at its expense, may move, relocate, and alter any such Access Improvements and Utility Improvements at any time according to the same terms as described above in paragraphs 1.1 and 1.2.

1.6 No MEH Responsibility. MEH, its successors and assigns, employees, managers, affiliates, officers, agents and contractors, shall have no responsibility, obligation, or liability whatsoever to LINCOLN or its agents, employees, or contractors, for any occurrence on or about the Easement Area or the MEH Parcel or with respect to any property of LINCOLN, its successors and assignees, or its employees, managers, affiliates, officers, agents or contractors, including, without limitation, any loss, injury, or damage, all such obligations or liabilities being hereby waived and released to the extent permitted by law.

1.7 Indemnification. LINCOLN and its successors and assigns, hereby agree to indemnify, defend, and hold MEH, its successors and assigns, employees, managers, affiliates, officers, agents and contractors harmless from and against any and all liabilities, penalties, losses, damages, costs, and expenses (including reasonable costs and attorneys' fees), causes of action, claims, demands, and/or judgments (collectively, "**Claims**") arising out of or relating to the acts, omissions and negligence of LINCOLN, its successors, assigns, tenants, occupants, mortgagees, invitees, licensees, customers or contractors of the Easement Areas.

1.8 Casualty and Condemnation. In the event all or any portion of the Easement Area is: (i) damaged or destroyed by fire, flood, or other casualty; or (ii) taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, MEH shall, if necessary to provide access as agreed upon herein, promptly provide an addition to the Easement Area to ensure continued vehicular and pedestrian access, ingress and egress, upon, over, across, and through the MEH Parcel.

1.9 Miscellaneous Easement Provision.

(a) MEH makes no representation or warranty whatsoever, express or implied, with respect to the Easement Area, including, without limitation, any hazards or dangers found at the Easement Area. LINCOLN understands and acknowledges that LINCOLN and LINCOLN's invitees enter the MEH Parcel at their own risk.

(b) This Agreement and the rights of LINCOLN contained in this Agreement shall not be construed as a lease and shall not create a landlord-tenant relationship between MEH and LINCOLN.

ARTICLE II
RIGHT OF FIRST REFUSAL

2.1 Grant of Right of First Refusal. LINCOLN hereby grants to MEH a right of first refusal ("**ROFR**") to purchase the Lincoln Parcel (the "**ROFR Property**") upon the following terms:

2.2 Until July 11, 2026 (the “**ROFR Period**”), LINCOLN shall not, directly or indirectly through an affiliate, enter into any agreement or consummate any transaction relating to the sale or other disposition of the ROFR Property with any Person other than MEH (a “**Third-Party Transaction**”) without first delivering to MEH a notice (the “**First Refusal Notice**”) attaching a copy of any letter of intent or proposed agreement for the Third Party Transaction, the identity of the proposed purchaser (the “**Purchaser**”), and the material financial, payment and other terms and conditions of such proposed transaction (the “**Material Terms**”). Each First Refusal Notice constitutes an offer made by LINCOLN to MEH or its designee to purchase ROFR Property on the Material Terms and other terms typical to commercial real estate transactions in Missoula County, State of Montana (the “**ROFR Offer**”).

2.3 At any time prior to the expiration of a thirty (30) day period following MEH’s receipt of the Offer Notice (the “**Exercise Period**”), MEH may accept the ROFR Offer by delivering to LINCOLN a binding letter of agreement containing the Material Terms and any standard and customary conditions applicable to a transaction of this nature (the “**Purchase Terms**”), executed by MEH; provided, however, that MEH is not required to accept any non-financial terms or conditions contained in any Material Terms that cannot be fulfilled by MEH as readily as by any other Person (e.g., an agreement conditioned upon the services of a particular individual or the supply of a product exclusively under the control of such third-party offeror).

2.4 Sale Under ROFR. A sale pursuant to this Article II shall be conducted in accordance with this Section 2.4. On the Closing Date, which shall be no later than sixty (60) days after MEH’s delivery of the letter of agreement to accept the ROFR Offer:

- (a) MEH shall purchase the Property on the Purchase Terms;
- (b) LINCOLN shall deliver to MEH or its designee a deed with warranty, together with any ancillary documents necessary for the recordation thereof and any required tax documents;
- (c) The closing shall be held in accordance with local custom in Montana;
- (d) LINCOLN shall deliver to the title company closing transaction evidence of authority to transfer the Property to MEH and any other customary affidavits, indemnities, or documentation required by any title insurance company insuring the fee interest in the ROFR Property; and
- (e) All title insurance premiums, and other costs, fees, and expenses (including reasonable attorney’s fees and expenses) incurred in connection with the transfer of the ROFR Property to MEH shall be paid in accordance with the

Material Terms (or, if not specified therein, in accordance with local custom for commercial real estate transactions in Montana).

2.5 If, by the expiration of the Exercise Period, MEH has not accepted the ROFR Offer, and provided that LINCOLN has complied with all of the provisions of this Article, at any time during the one hundred fifty (150) day period following the expiration of the Exercise Period, LINCOLN may consummate the Third-Party Transaction in the applicable Offer Notice on Material Terms that are the same or more favorable to LINCOLN as the Material Terms set forth in the Offer Notice.

2.6 If such Third-Party Transaction is not consummated within such one hundred fifty (150) day period, the terms and conditions of this Article will again apply and LINCOLN shall not enter into any Third-Party Transaction during the ROFR Period without affording MEH the right of first refusal on the terms and conditions of this Article. For the avoidance of doubt, the terms and conditions of this Section 2.6 apply to each Third-Party Offer received by LINCOLN during the ROFR Period.

ARTICLE III **MISCELLANEOUS**

3.1 Not a Public Dedication. Nothing contained in this Agreement shall, or shall be deemed to, constitute a gift or dedication of any portion of the Property to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention that this Agreement shall be strictly limited to and for the purposes expressed herein. The Parties shall be permitted, from time to time, to take whatever reasonable action the Parties deem necessary to prevent any portion of the Easement Areas from being dedicated or taken for public use or benefit.

3.2 Duration. The easements and restrictions herein created, declared, and granted shall be perpetual and shall run with the land.

3.3 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective legal representatives, heirs, successors and assigns. The easements shall not be conveyed or assigned separately from the benefited portion of the Property to which it is appurtenant. This Agreement shall not impair the right of either Party to hereafter convey any interest in any or all of the Property burdened or benefited hereby, provided that any such conveyance is subject hereto; provided, however, when a transfer of ownership of any portion of the Property herein burdened occurs, to the extent of the portion transferred, the liability hereunder of the transferor for breach of covenant occurring thereafter shall automatically terminate and the transferee shall become liable for the covenants and obligations herein, further provided that from and after such transfer of ownership the transferor shall remain liable for any breach of this Agreement occurring prior to the date of transfer.

3.4 Severability. If any term or provision of this Agreement, to any extent, shall be held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each such remaining term and provision hereof shall be valid and enforced to the fullest extent permitted by law.

3.5 Enforcement. In the event a Party breaches any term, covenant, restriction, or condition of this Agreement, the other Party shall have, in addition to the right to collect damages, the right to enjoin such breach or threatened breach in a court of competent jurisdiction.

3.6 Attorneys' Fees. In the event a Party initiates or defends any legal action or proceeding in any way connected with this Agreement, the prevailing Party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing Party in any such action or proceeding its reasonable costs and attorneys' fees. All such costs and attorneys' fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

3.7 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Montana.

3.8 Running of Benefits and Burdens. All provisions of this Agreement, including the benefits and burdens hereof, shall run with the land and shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns, heirs, and personal representatives of the Parties.

3.9 Recitals and Exhibits. The recitals above and exhibits attached hereto are hereby incorporated into this Agreement by this reference as if fully set forth herein.

3.10 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original but all of which constitute one and the same instrument. The signature pages may be detached from each counterpart and combined into one instrument. The Parties expressly agree that the transactions contemplated by this Agreement may be conducted by electronic means. In furtherance of the foregoing, this Agreement may be signed and delivered by facsimile or via email in PDF or other similar format, each of which shall be effective as an original.

3.11 Notice. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be in writing and shall be given by: (i) hand delivery; (ii) U.S. Certified Mail, return receipt requested, with postage prepaid; or (iii) a national overnight delivery service (e.g., FedEx). Such notices, requests, demands, and other communications shall be deemed duly given and received as follows: (i) if by hand delivery, upon the delivery (or refusal to accept delivery) thereof; (ii) if by U.S. Certified Mail, upon the earliest of any of the following: (a) the date of delivery thereof as

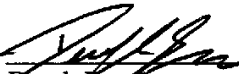
shown on the return receipt; (b) the date of receipt of delivery thereof by the Party to whom it was addressed; or (c) the third day following the date of the deposit thereof in the mail; or (iii) if by national overnight delivery service (*e.g.*, FedEx), the next day after the deposit thereof with such service. Such notices, requests, demands, and other communications shall be addressed to the appropriate Party at the address first set forth above, or at such other address as a Party may from time to time specify by notice to the other Party.

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IN WITNESS WHEREOF, the Parties have caused this Easement and Right of First Refusal Agreement to be duly executed as of the Effective Date defined above.

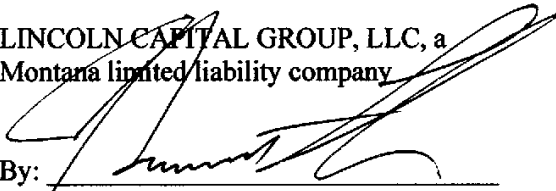
MEH:

Missoula Expressway Hotel, LLC, a
Montana limited liability company
By: Ence Ventures, Its Sole Member

By: 
Derek Ence
Its: Manager
Date: 6-13-23

LINCOLN:

LINCOLN CAPITAL GROUP, LLC, a
Montana limited liability company

By: 
Grant Lincoln
Its: MANAGER
Date: 7.5.23

ACKNOWLEDGEMENT OF MEH

STATE OF Utah)
 : ss.
COUNTY OF Summit)

On the 13 day of June, 2023, personally appeared before me, Derek Ence, who being by me duly sworn did say that he is the Manager of Ence Ventures, LLC, as the Sole Member of Missoula Expressway Hotel, LLC, a Montana limited liability company, and acknowledged to me that he executed the foregoing instrument on behalf of Missoula Expressway Hotel, LLC for its stated purpose.

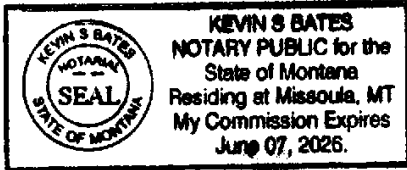


[Signature]
NOTARY PUBLIC

ACKNOWLEDGMENT OF LINCOLN

STATE OF MT)
 : ss.
COUNTY OF Missoula)

On the 5th day of July, 2023, personally appeared before me, Grant Lincoln, who being by me duly sworn did say that he is the manager of LINCOLN CAPITAL GROUP, LLC, a Montana limited liability company, and acknowledged to me that he executed the foregoing instrument on behalf of LINCOLN CAPITAL GROUP, LLC for its stated purpose.



[Signature]
NOTARY PUBLIC

Attachment A
Preliminary Conceptual Site Plan

