

COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT AND TIF NOTE

THIS COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT AND TIF NOTE (this “*Collateral Assignment*”) is made and delivered as of October ___, 2024 by INCLINE PLAZA DEVELOPMENT LLC, a New York limited liability company (“*Borrower*”), to and for the benefit of SolPacific Income Fund, LLC, a Minnesota limited liability company, and its successors and assigns (“*Lender*”).

RECITALS

A. Pursuant to the terms of the Loan Agreement of even date herewith by Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “*Loan Agreement*”), the Lender has agreed to make a loan to Borrower in the original principal amount of up to \$9,000,000 (the “*Loan*”).

B. Borrower is the owner of the Land (as such term is defined in the Loan Agreement) and proposes to construct a 70-unit residential condominium development on the Land.

C. Borrower and the Duluth Economic Development Authority, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the “*Authority*”) have entered into that certain Development Agreement dated as of March 19, 2024 (the “*TIF Agreement*”).

D. Pursuant to the TIF Agreement, the Authority has agreed to issue a promissory note or notes to Borrower payable from Eligible Tax Increment (as defined in the TIF Agreement) upon the satisfaction of certain conditions (the “*TIF Note*”).

E. Borrower is or will be entitled to receive certain payments from the Authority pursuant to the TIF Agreement and the TIF Note.

NOW, THEREFORE, in consideration of the making of the Loan and as an inducement to Lender to do so, and for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, Borrower and Lender agree as follows:

1. **Defined Terms.** Capitalized terms not otherwise defined herein shall have the meanings given thereto in the Loan Agreement.

2. **Creation of Security Interest.** To secure Borrower’s obligations under the Loan Documents (the “*Obligations*”), Borrower hereby grants to Lender a security interest in, and does hereby collaterally assign, pledge, mortgage, convey and set over unto Lender, any and all of Borrower’s right, title and interest in, to and under the following (collectively, the “*Collateral*”):

- (a) the Borrower’s rights to receive payments under the TIF Agreement; and
- (b) the TIF Note.

Any amounts received under the TIF Agreement or the TIF Note are collectively referred to in this Collateral Assignment as “**Authority Funds**”. This Collateral Assignment is specifically confined to the Eligible Tax Increment generated from the construction of the Phase I 70-unit condominium development. It shall expire and be released when Lender’s loan has been repaid.

3. **Deposit of Authority Funds with Lender.** If there is an Event of Default under the Loan Agreement, Borrower hereby directs that amounts payable pursuant to the TIF Note and TIF Agreement shall be paid by the Authority (if due and payable pursuant to the terms of the TIF Note and TIF Agreement) to an account established by Borrower with Lender until the full repayment of the Loan. Borrower covenants and agrees to take any and all actions requested by Lender or the Authority to facilitate direct payment of such amounts by the Authority to Lender, including but not limited to execution by Borrower of a letter of direction to the Authority, if required by the Authority. If after an Event of Default Borrower receives any payment of Authority Funds, Borrower shall immediately remit such payment(s) to Lender, provided that the Loan remains outstanding at the time of such payment(s).

4. **Representations, Warranties and Covenants of Borrower.** Borrower represents, warrants and covenants to Lender that:

(a) Borrower shall not sell, transfer, assign, pledge, encumber or mortgage all or any portion of the Collateral or any interest therein without the prior written consent of Lender, or permit anything to be done that may materially impair the value of any of the Collateral or the security intended to be afforded by this Collateral Assignment. Borrower shall not amend, modify or terminate any of the documents or instruments constituting part of the Collateral without Lender’s prior written consent.

(b) Borrower hereby irrevocably authorizes Lender at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto that (a) describe the Collateral, and (b) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment. Borrower shall pay any costs, expenses and fees, including court costs and reasonable attorneys’ fees, necessary to protect the security interest under this Collateral Assignment against the rights, interests or claims of third parties.

(c) Borrower shall reimburse Lender for all reasonable costs, expenses and fees, including court costs and reasonable attorneys’ fees, incurred for any action taken by Lender to remedy an Event of Default of Borrower under this Collateral Assignment, including without limitation, expenses incurred pursuant to Section 7 below, together with interest on all said amounts at an annual rate equal to twenty (20) percent from and after the date that is ten (10) days after Lender demands reimbursement until the date reimbursed by Borrower.

(d) Borrower will timely perform all covenants, agreements and conditions required to be performed under this Collateral Assignment and all of the documents, instruments, agreements and contracts constituting the Collateral.

(e) Borrower represents, warrants and covenants to Lender that it is the sole owner of all right, title and interest of the Collateral.

(f) Borrower agrees to take reasonable efforts to enforce performance by the Authority of each obligation, covenant, condition and agreement to be performed by the Authority under each document, instrument, agreement or contract constituting the Collateral.

(g) Borrower has not performed any act that might prevent Borrower from performing its obligations hereunder or that might prevent Lender from enforcing its rights pursuant to the terms and provisions hereof.

(h) Borrower agrees to deliver to Lender concurrently herewith true, complete and correct copies of the TIF Agreement and all correspondence from the Authority relating thereto.

(i) On or before the date of this Collateral Assignment, Borrower obtained Authority's consent to this Collateral Assignment, which is attached hereto.

5. **Limitation of Lender's Liability.** Notwithstanding anything to the contrary contained in any of the Collateral, Borrower's interest therein is assigned and transferred to Lender by way of collateral security only, and the Lender by its acceptance hereof shall not be deemed to have assumed or become liable for any of the obligations or liabilities of Borrower under the Collateral, whether provided for by the terms thereof, arising by operation of law or otherwise. Borrower hereby acknowledges that Borrower shall remain liable for the due performance of Borrower's obligations under the Collateral to the same extent as though this Collateral Assignment had not been made. It is expressly intended, understood and agreed that this Collateral Assignment, the Loan Agreement and the other Loan Documents are made and entered into for the sole protection and benefit of Lender and Borrower, and their respective successors and assigns (but in the case of Borrower's assigns, only to the extent permitted in the Loan Agreement), and, no other person or persons shall have any right of action hereunder, and no other person or persons shall have rights to the Collateral at any time, and that no third party shall under any circumstances be entitled to any equitable lien on the undisbursed proceeds of the Collateral at any time. The relationship between Lender and Borrower is solely that of a lender, borrower and/or pledgor, and nothing contained in this Collateral Assignment shall in any manner be construed as making the parties hereto partners or joint venturers or creating any other relationship other than lender, borrower and/or pledgor.

6. **Events of Default.** An "Event of Default" shall occur under this Collateral Assignment upon the occurrence of an Event of Default set forth in the Loan Agreement.

7. **Remedies.** Upon the occurrence and during the continuance of an Event of Default, Lender shall have the rights and remedies set forth in the Loan Agreement, including, without limitation, the right to, either in person or by agent, with or without bringing any action or proceedings, or by a receiver to be appointed by a court at any time hereafter, enforce its rights as to the Collateral for its own benefit.

8. **Waiver and Indemnity.** Borrower hereby agrees that no liability shall be asserted or enforced by Borrower against Lender in its exercise of the powers and rights herein granted, all such liability being hereby expressly waived and released by Borrower; provided such release and waiver shall not extend to any liability (a) arising from acts of gross negligence or willful misconduct by Lender, or (b) of Lender arising from and after, and as a result of, Lender succeeding to the interests of Borrower under the TIF Agreement and TIF Note. Borrower hereby agrees to indemnify, defend and hold Lender harmless from and against any and all liability, expense, cost or damage that Lender may incur by reason of any act or omission of Borrower under any of the documents, instruments, or agreements constituting the Collateral.

9. **Notices.** All notices and demands that are required or permitted to be given or served under this Collateral Assignment shall be deemed sufficiently served when delivered or mailed to Borrower in the manner and to the persons described in the Loan Agreement.

10. **Termination.** Upon full payment of the Obligations, this Collateral Assignment and the lien or charge created hereby shall automatically terminate.

11. **Counterparts; Facsimile Signatures.** This Collateral Assignment may be executed in any number of counterparts, all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Receipt of an executed signature page to this Collateral Assignment by facsimile or other electronic transmission shall constitute effective delivery thereof.

12. **Miscellaneous.** This Collateral Assignment and all rights and liabilities hereunder and in and to any and all Collateral shall inure to the benefit of Lender and its successors and assigns, and shall be binding upon Borrower and its successors and permitted assigns. This Collateral Assignment and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the State of Minnesota. All provisions of this Collateral Assignment shall be deemed valid and enforceable to the extent permitted by law. Any provision or provisions of this Collateral Assignment that are held unenforceable, invalid or contrary to law by a court of competent jurisdiction, shall be of no force or effect, and in such event each and all of the remaining provisions of this Collateral Assignment shall subsist and remain and be fully effective per the terms of this Collateral Assignment as though such invalid, unenforceable or unlawful provision or provisions had not been included in this Collateral Assignment. Time is of the essence of this Collateral Assignment. The headings of sections in this Collateral Assignment are for convenience only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

13. **Governing Law.** This Collateral Assignment is subject to the provisions of Section 12.2 of the Loan Agreement, which, among other things, shall govern choice of law, venue, and jurisdiction.

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IN WITNESS WHEREOF, Borrower has caused this Collateral Assignment of Development Agreement and TIF Note to be executed as of the date first above written.

BORROWER:

INCLINE PLAZA DEVELOPMENT LLC,
a New York limited liability company

By: Eli Leshkowitz
Its: Member

And by: Lazar Ostreicher
Its: Member

CONSENT OF DEDA

The Duluth Economic Development Authority, a public body corporate and politic under the laws of the State of Minnesota, hereby consents to the terms of the attached Collateral Assignment of Development Agreement and TIF Note.

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

By: _____
Its President

By: _____
Its Secretary