

PREPARED BY & RETURN TO:

Hal J. Taylor
Vinson & Elkins LLP
200 West 6th Street, Suite 2500
Austin, Texas 78701

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT (this “Agreement”) made as of January 12, 2024, by and between **OAKWORTH CAPITAL BANK** (“Bank”), having an address at 850 Shades Creek Parkway, Ste. 200, Birmingham, Alabama 35209, Attention: Johanna Blankenship; **CREDIT TO CTC AL LLC**, a Texas limited liability company (“Tenant”), having an address at 4407 Bee Caves Road, Suite 212, Austin, Texas 78746, Attention: Drew Gressett; and **FOWL PLAY HOLDINGS, LLC**, an Alabama limited liability company (“Landlord”), having an address at 2908 Pump House Road, Suite 150, Mountain Brook, Alabama 35243, Attention: Russell H. Pate.

Bank has made available a loan (the “Loan”) to Landlord, which Loan is secured by that certain Mortgage and Security Agreement and Assignment of Leases and Rents dated February 14, 2022 and executed on behalf of Landlord, and recorded in the applicable real property records (as amended, modified or restated from time to time, the “Mortgage”). The Mortgage constitutes a first lien against the real property described on Exhibit A attached hereto and by this reference incorporated herein (the “Property”).

Tenant has entered into that certain Lease Agreement dated January 12, 2024, between Landlord and Tenant (as amended, modified or restated from time to time, the “Lease”) covering the Property. As a condition to making the Loan to Landlord, Bank required that any lease of the Property be subordinated to the Mortgage and that the tenant under any such lease agree to attorn to the purchaser of the Property in the event of foreclosure of the Mortgage, or to Bank prior to foreclosure in the event Bank elects to collect the rents and other sums due and becoming due under such lease, and Tenant is willing to so attorn if Bank will recognize Tenant’s rights under the Lease as hereinafter provided.

Relying on the covenants, agreements, representations and warranties contained in this Agreement, Bank, Tenant and Landlord agree as follows:

Section 1. Subordination of Lease. Subject to the terms and conditions of this Agreement, the Lease is and shall be subject and subordinate to the provisions and liens of the Mortgage and to all renewals, modifications, consolidations, replacements, and extensions thereof, to the full extent of the principal amount and other sums secured thereby and interest thereon.

Section 2. Attornment. Tenant agrees that Tenant will attorn to and recognize: (i) Bank, whether as mortgagee in possession or otherwise; or (ii) any purchaser at a foreclosure sale under the Mortgage, or any transferee who acquires possession of or title to the Property, or



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any successors and assigns of such purchasers and/or transferees (each, a “Successor”), as its landlord for the unexpired balance (and any extensions, if exercised) of the term of the Lease upon the terms and conditions set forth therein. Such attornment shall be effective and self-operative without the execution of any further instruments by any party hereto; provided, however, that Tenant will, upon request by Bank or any Successor, execute a written agreement, in form and substance reasonably acceptable to Tenant, attorning to Bank or such Successor.

Section 3. Non-Disturbance. So long as Tenant complies with Tenant’s obligations under this Agreement and is not in default under the Lease beyond any applicable notice and cure periods, Bank will not disturb Tenant’s use, possession and enjoyment of the Property, nor will Bank name Tenant as a party in any action or proceeding to enforce or foreclose the Mortgage (except as required by applicable law), nor will Tenant’s rights under the Lease be impaired in any foreclosure action, sale under a power of sale, transfer in lieu of the foregoing, or the exercise of any other remedy pursuant to the Mortgage.

Section 4. Assignment of Leases. Tenant consents to the assignment of leases and rents contained in the Mortgage (the “Assignment”). Tenant agrees that if Bank, pursuant to the Assignment, and whether or not it becomes a mortgagee in possession, shall give notice to Tenant that Bank has elected to require Tenant to pay to Bank the rent and other charges payable by Tenant under the Lease, Tenant shall, until Bank shall have canceled such election, thereafter pay to Bank all rent and other sums payable under the Lease. Tenant shall have no responsibility to ascertain whether such demand by Bank is permitted under the Assignment, or to inquire into the existence of an event of default. Landlord hereby waives any right, claim, or demand it may now or hereafter have against Tenant by reason of such payment to Bank, and shall discharge the obligations of Tenant to make such payment to Landlord.

Section 5. Limitation of Liability. In the event that Bank succeeds to the interest of Landlord under the Lease, or obtains title to the Property, then Bank and any Successor shall assume and be bound by the obligations of the landlord under the Lease which accrue from and after such party’s succession to any prior landlord’s interest in the Property, but Bank and such Successor shall not be: (i) liable for any act or omission of any prior landlord; (ii) liable for the retention, application or return of any security deposit to the extent not paid over to Bank; (iii) subject to any offsets or defenses which Tenant might have against any prior landlord; (iv) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord, to the extent not received by Bank. Nothing in this section shall be deemed to waive any of Tenant’s rights and remedies against any prior landlord.

Tenant agrees that any person or entity which at any time hereafter becomes the landlord under the Lease, including, without limitation, Bank or any Successor, shall be liable only for the performance of the obligations of the landlord which arise during the period of its or their ownership of the Property and shall not be liable for any obligations of the landlord under the Lease which arise prior to or subsequent to such ownership. Tenant further agrees that any such liability shall be limited to the interest of Bank or such Successor in the Property.

Section 6. Right to Cure Defaults. Tenant shall use commercially reasonable efforts to give written notice to Bank simultaneously with Tenant’s giving of written notice of any default by Landlord under the Lease, specifying the nature of such default, and thereupon



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Bank shall have the right (but not the obligation) to cure such default within the same cure period (if any) afforded to Landlord under the Lease, and Tenant shall not terminate the Lease or abate the rent payable thereunder by reason of such default unless and until any applicable cure period (as set forth in the Lease) has run without the underlying default being fully cured by Landlord or Bank. It is specifically agreed that Tenant shall not require Bank to cure any default which is not susceptible of cure by Bank.

Section 7. Tenant's Agreements. Tenant hereby covenants and agrees that: (i) Tenant shall not pay any rent under the Lease more than one month in advance, except as required under the Lease; and (ii) Tenant shall have no right to appear in any foreclosure action under the Mortgage unless and until Tenant is named in any such action by any other party.

Section 8. Authorization to Execute. Tenant represents and warrants that the individual executing this Agreement on behalf of Tenant is duly authorized to execute and deliver this Agreement on behalf of Tenant in accordance with the operating agreement of Tenant.

Section 9. Miscellaneous. (i) The provisions hereof shall be binding upon and inure to the benefit of Tenant and Bank and their respective successors and assigns; (ii) any demands or requests shall be sufficiently given to Tenant if in writing and mailed or delivered to the address of Tenant shown above and to Bank if in writing and mailed or delivered to the address of Bank shown above or such other address as Bank may specify from time to time; (iii) this Agreement may not be changed, terminated, or modified orally or in any manner other than by an instrument in writing signed by the parties hereto; (iv) the captions or headings at the beginning of each paragraph hereof are for the convenience of the parties and are not part of this Agreement; (v) the term "Bank" as used herein includes any successor or assign of the named Bank herein, including without limitation, any co-lender, any purchaser at a foreclosure sale and any transferee pursuant to a deed in lieu of foreclosure, and their successors and assigns, and the terms "Tenant" and "Landlord" as used herein include any successor and assign of the named Tenant and Landlord herein, respectively; provided, however, that such reference to Tenant's or Landlord's successors and assigns shall not be construed as Bank's consent to any assignment or other transfer by Tenant or Landlord; (vi) if any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect, and shall be liberally construed in favor of Bank; (vii) this Agreement shall be governed by and construed in accordance with the internal laws (as opposed to conflicts with laws provisions) of the state in which the Property is located.

(Signatures Commence on the Following Page.)



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BANK:

OAKWORTH CAPITAL BANK,

a Alabama Banking Corporation

By: W Grant Morgan
Name: W GRANT MORGAN
Title: Client Advisor

STATE OF ALABAMA

COUNTY OF JEFFERSON

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I, a notary public in and for said County in said State, hereby certify that W. GRANT MORGAN, whose name as CLIENT ADVISOR of OAKWORTH CAPITAL BANK, a _____, is signed to the foregoing agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said entity as of the day the same bears date.

Given under my hand this 12 day of January, 2024.



Stacy Crawford Hurst
NOTARY PUBLIC
MY COMMISSION EXPIRES 12/12/2027



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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, or have caused this Agreement to be duly executed, effective as of the day and year first above written.

TENANT:

CREDIT TO CTC AL LLC, a Texas limited liability company

By: 

Name: Drew Gressett

Title: Authorized Signatory

STATE OF TEXAS

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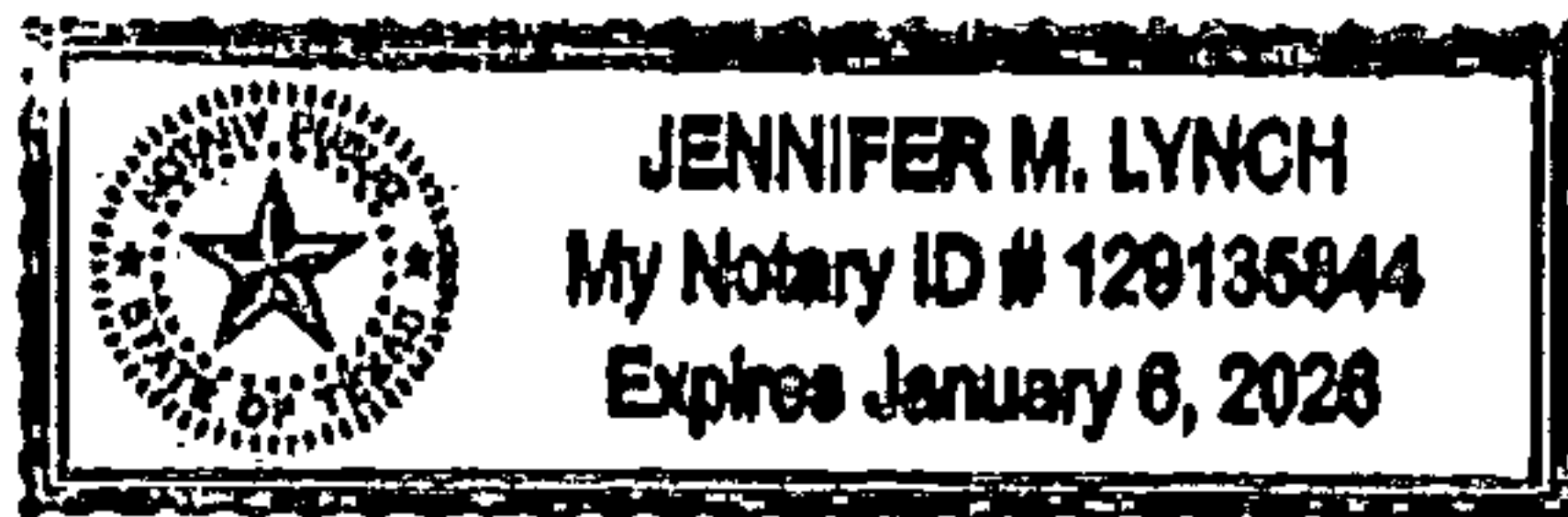
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COUNTY OF TRAVIS

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I, a notary public in and for said County in said State, hereby certify that Drew Gressett, whose name as Authorized Signatory of CREDIT TO CTC AL LLC, a Texas limited liability company, is signed to the foregoing and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this the 11 day of January, 2024.




NOTARY PUBLIC

MY COMMISSION EXPIRES January 6, 2026

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LANDLORD:

FOWL PLAY HOLDINGS, LLC, an Alabama
limited liability company

By: [Signature]
Name: Russell H. Pate
Title: Administrative Member

STATE OF ALABAMA §
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COUNTY OF Jefferson §

I, a notary public in and for said County in said State, hereby certify that Russell H. Pate whose name as Administrative Member of FOWL PLAY HOLDINGS, LLC, an Alabama limited liability company, is signed to the foregoing and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this the 11th day of January, 2024.

KAYLA STONE
NOTARY PUBLIC
STATE OF ALABAMA

[Signature]
NOTARY PUBLIC
MY COMMISSION EXPIRES 07/07/2024



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EXHIBIT A

Legal Description

3734 Pelham Parkway, Pelham, AL 35124

Parcel A, Lot 1, according to the Survey of Zaxby's, as recorded In Map Book 39, Page 143, In the Probate Office of Shelby County, Alabama.