

ENT95718:2022 PG 1 of 12
Andrea Allen
Utah County Recorder
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RECORDED FOR Rudd & Hawkes Title Insurance Agency,
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When recorded, mail to:

Brian D. Cunningham, Esq.
SNELL & WILMER L.L.P.
Gateway Tower West
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101

APN: 39-280-0001

SUBORDINATION, NONDISTURBANCE AND ATTORNEY AGREEMENT

NOTICE: THIS SUBORDINATION, NONDISTURBANCE AND ATTORNEY AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNEY AGREEMENT (the "*Agreement*") is made as of August 25, 2022, by and among **SHINY SHELL – PIONEER CROSSING, LLC**, a Utah limited liability company ("*Landlord*"), **BDB OIL CO**, a Utah corporation ("*Tenant*"), and **WASHINGTON FEDERAL BANK**, a Washington state chartered commercial bank ("*Lender*").

RECITALS:

A. Lender has or will extend a loan to Landlord in the original maximum principal amount of **SIX MILLION THREE HUNDRED TEN THOUSAND AND 00/100 DOLLARS (\$6,310,000.00)**, subject to increase as provided herein to an amount not to exceed **SEVEN MILLION EIGHT HUNDRED EIGHTY-EIGHT THOUSAND FIVE HUNDRED FIFTY AND 00/100 DOLLARS (\$7,888,550.00)** (the "*Loan*").

B. The Loan is evidenced by a Promissory Note dated on or about the date of this Agreement and which is made payable to Lender in the original principal amount of **SIX MILLION THREE HUNDRED TEN THOUSAND AND 00/100 DOLLARS (\$6,310,000.00)** and an Earn Out Note, if executed and delivered (as the same may be amended, modified, extended, and renewed from time to time, collectively the "*Note*"). As security for repayment of the Loan and Note and performance of Landlord's obligations to Lender, Lender has required that Landlord execute and deliver to Lender that certain Deed of Trust, Assignment of Leases and Rents, Assignment of Contracts, Security Agreement and Fixture Filing dated on or about the date of this Agreement for the benefit of Lender (as it may be amended, modified, extended, and renewed from time to time, the "*Deed of Trust*"), which will be recorded in the official records of Utah County, Utah, encumbering the property described on Exhibit A attached hereto and made a part hereof and all improvements thereon (the "*Real Estate*").

C. Pursuant to that certain Commercial Lease dated as of July 14, 2022 (as the same may be amended, modified, or supplemented from time to time, the "*Lease*"), Landlord has leased a portion of the Real Estate to Tenant on the terms and conditions set forth in the Lease.

D. The Lease was guaranteed by **JOHN CLOWARD**, an individual, and **BDB OIL CO**, a Utah corporation (collectively, "*Guarantor*"), pursuant to that certain Guaranty of Lease attached to the Lease. The Consent of Guarantor attached hereto as Exhibit B is hereby incorporated into this Agreement.

E. The parties desire to agree upon the relative priorities of their interests in the Real Estate and their rights and obligations if certain events occur.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties, the parties do hereby covenant and agree as follows:

1. Definitions. The following terms shall have the following meanings for purposes of this Agreement:

(a) ***Foreclosure Event*** means (i) judicial or non-judicial foreclosure under the Deed of Trust; (ii) any other exercise by Lender of rights and remedies (whether under the Deed of Trust or under applicable law, including bankruptcy law) as holder of the Note and/or the Deed of Trust, as a result of which Successor Landlord becomes owner of the Real Estate; or (iii) delivery by trustee under the Deed of Trust ("Trustee") to Lender (or its designee or nominee) of a deed or other conveyance of Trustee's interest in the Real Estate in lieu of any of the foregoing.

(b) ***Successor Landlord*** means any party that becomes owner of the Real Estate as the result of a Foreclosure Event, including, but not limited to, Lender.

2. Subordination of Lease. The parties acknowledge and agree that the Lease is and shall be subject and subordinate, in right, interest, and lien, and for all purposes to the Deed of Trust, and to all renewals, modifications, consolidations, replacements, and extensions thereof, and to any subsequent deed of trust with which the Deed of Trust may be spread or consolidated, to the full extent of the principal sum and all other amounts secured thereby and interest thereon.

3. Nondisturbance and Attornment.

(a) No Exercise of Deed of Trust Remedies against Tenant. So long as the Lease is in full force and effect and Tenant is not in default under the Lease beyond any applicable cure period, Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default under the Deed of Trust unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or pursuing such rights and remedies. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.

(a) Nondisturbance and Attornment. If the Lease has not been terminated, then, when Successor Landlord takes title to the Real Estate: (i) Successor Landlord shall not terminate or disturb Tenant's possession of Tenant's premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (ii) Successor Landlord shall be bound to Tenant under all terms and conditions of the Lease (except as provided in this Agreement); (iii) Tenant shall recognize and attorn to Successor Landlord as Landlord under the Lease as affected by this Agreement as provided in Section 4 herein; and (iv) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant.

(b) Further Documentation. The provisions of this Agreement shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Agreement in writing upon request by either of them.

4. Attornment. If Successor Landlord shall succeed to the interest of the Landlord under the Lease, and Successor Landlord shall use commercially reasonable efforts to provide Tenant with written notice regarding the

same, and the Lease shall not have expired or been terminated in accordance with the terms of the Lease or this Agreement, Tenant shall, from and after such event, attorn to Successor Landlord, all rights and obligations under the Lease to continue as though the interest of Landlord had not terminated or such Foreclosure Event had not occurred. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of the parties hereto. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of Successor Landlord, at no material expense to Tenant, any instrument or certificate which, in the sole judgment of Successor Landlord, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment.

5. Rights and Obligations of Successor Landlord Under Lease. Successor Landlord in the event of attornment shall have the same remedies in the event of any default by Tenant (beyond any period given to Tenant under the Lease to cure such default) in the payment of any rent or additional rent or in the performance of any of the terms, covenants, and conditions of the Lease on Tenant's part to be performed that are available to Landlord under the Lease. Tenant shall have the same remedies against Successor Landlord for the breach of any agreement contained in the Lease that Tenant might have had against Landlord if Successor Landlord had not succeeded to the interest of Landlord; provided, however, that Successor Landlord shall not be:

(a) liable for any act or omission of or any claims against any prior landlord (including Landlord), unless Tenant shall have given notice of such act or omission to the party who was then the beneficiary under the Deed of Trust (no matter whether such holder elected to cure or remedy such act or omission). Notwithstanding the foregoing, in the event that Lender has received notice from Tenant of a Landlord act or omission under the Lease, and Lender has from and after the time of receipt of such notice from Tenant, used commercially reasonable efforts to cure such act or omission under the Lease, Lender shall have no liability to Tenant for such Landlord default or any damages resulting therefrom which arose or occurred during the period of time prior to Lender becoming the Successor Landlord; or

(b) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord) (except those expressly permitted under the Lease and only prospectively from and after the date of attornment under Section 4 above) or defenses which Tenant might have against any prior landlord (including Landlord) unless Tenant shall have given notice of the state of facts or circumstances under which such offset or defense arose to the party who was the then beneficiary under the Deed of Trust (whether or not such holder elected to cure or remedy such condition). Notwithstanding the foregoing, in the event that Lender has received notice from Tenant of such facts or circumstances under the Lease, and Lender has from and after the time of receipt of such notice from Tenant, used commercially reasonable efforts to cure such facts or circumstances under the Lease, Lender shall have no liability to Tenant for such Landlord default or any damages resulting therefrom which arose or occurred during the period of time prior to Lender becoming the Successor Landlord; or

(c) bound by any rent or additional rent which Tenant might have paid to any prior landlord (including Landlord) more than thirty (30) days in advance of the due date under the Lease; or

(d) bound by any amendment or modification of the Lease, or waiver of any of its terms, made without its consent, unless such amendment or modification was subsequently affirmed in writing by an intervening beneficiary of the Deed of Trust; or

(e) liable for any sum that any prior landlord (including Landlord) owed to Tenant, including without limitation any security deposit, unless the amount owed was actually delivered to Successor Landlord; or

(f) bound by any surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant without either (i) Lender's consent thereto, or (ii) complying with the terms of Section 7 herein; or

- (g) liable for any construction obligation or tenant improvement allowance obligation of any prior landlord (including Landlord); or
- (h) liable for any breach of representation or warranty of any prior landlord (including Landlord); or
- (i) liable for any damages or other relief attributable to any latent or patent defects in construction with respect to any portion of the Real Estate.

6. Exculpation of Successor Landlord. Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement, the Lease shall be deemed to have been automatically amended to provide that Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor Landlord's Interest (as defined below) in the Real Estate. The term "**Successor Landlord's Interest**" shall include all right, title, and interest, if any, of Successor Landlord (or its successors or assigns) in and to: (i) the Real Estate; (ii) the rents, issues, profits and income from the Real Estate; (iii) the proceeds from the sale or other disposition or refinancing of all or any portion of such interest; and (iv) insurance proceeds or condemnation awards previously belonging to and received which are required, by the terms of this Lease, to be applied to the restoration of the Real Estate. Tenant shall look exclusively to Successor Landlord's Interest for payment or discharge of any obligations of Successor Landlord under the Lease as amended or affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord.

7. Lender's Right to Cure.

(a) Notice to Lender. Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any remedies under the Lease, Tenant shall provide Lender with notice of the breach or default by Landlord giving rise to same (a "**Default Notice**") and, or thereafter, the opportunity to cure such breach or default as provided for below.

(b) Lender's Cure Period. After Lender receives a Default Notice, Lender shall have a period of thirty (30) days beyond the time available to Landlord under the Lease in which to cure the breach or default by Landlord. Lender shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Lender agrees or undertakes otherwise in writing.

(c) Extended Cure Period. In addition, as to any breach or default by Landlord the cure of which requires Lender to possess and control the Real Estate, provided only that Lender undertakes to Tenant by written notice to Tenant within thirty (30) days after receipt of the Default Notice to exercise reasonable efforts to cure such breach or default within the period permitted by this paragraph, Lender's cure period shall continue for such additional time (the "**Extended Cure Period**") as Lender may reasonably require to obtain possession and control of the Real Estate and thereafter to cure the breach or default with reasonable diligence and continuity, but such period shall not exceed one hundred sixty (160) days. So long as any receiver of the Real Estate has been appointed and is continuing to serve, Lender shall be deemed to have possession and control of the Real Estate.

(d) Lease Cure Right. For the avoidance of doubt, the rights granted under this Section 7 are in addition to, rather in lieu of, any cure rights granted to Lender under the Lease. Furthermore, Tenant agrees that this Agreement shall constitute notice to Tenant of Lender's name and address pursuant to Section 24 of the Lease.

8. Confirmation of Facts. Tenant represents to Lender and to any Successor Landlord, in each case as of the date hereof:

(a) Effectiveness of Lease. The Lease is in full force and effect, has not been modified, and constitutes the entire agreement between Landlord and Tenant with respect to the Real Estate. Without limiting the foregoing, there are no oral or written agreements between Landlord and Tenant that would create any additional obligations of Landlord with respect to the Lease or the Real Estate, or that would reduce or limit any obligations of Tenant under the Lease. Tenant has no interest in the Real Estate, including any right or option to purchase any portion of the Real Estate, except as is expressly set forth in the Lease. Except as may be expressly set forth in the Lease, there are no conditions exist to Tenant's obligations under the Lease.

(b) No Default. Tenant is not in default under the Lease and has not received any uncured notice of any default by Tenant under the Lease and, to Tenant's actual knowledge, no breach or default by Landlord exists and no event has occurred that, with the giving of notice, the passage of time or both, would constitute such a breach or default.

(c) No Transfer. Tenant has not transferred, encumbered, mortgaged, assigned, conveyed or otherwise disposed of the Lease or any interest therein.

(d) Due Authorization. Tenant has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

9. Lease Guaranty. The Consent of Guarantor attached hereto as Exhibit B is hereby incorporated into this Agreement.

10. Notices. All notices, requests, demands and consents to be made hereunder to the parties hereto shall, unless otherwise expressly provided, be in writing and be delivered by hand or sent by registered mail or certified mail, postage prepaid, return receipt requested (except for any notice address which is a post office box, in which case notice may be given by first-class mail), through the United States Postal Service to the addresses shown below or such other address which the parties may provide to one another in accordance herewith. Such notices, requests, demands and consents, if sent by mail, shall be deemed given two (2) business days after deposit in the United States mail, and if delivered by hand, shall be deemed given when delivered. Any notices given or made under this Agreement may be given by legal counsel for the party giving such notice.

In the case of Landlord, to: Shiny Shell – Pioneer Crossing, LLC
3135 South Richmond Street
Salt Lake City, Utah 84106
Attention: Jared M. Richards

In the case of Tenant, to: BDB Oil Co
5688 West 13400 South
Herriman, Utah 84096
Attention: Gary Peterson

In the case of Lender, to: Washington Federal Bank
405 South Main Street, Suite 100
Salt Lake City, Utah 84111
Attention: John Herzog

With a copy to: Snell & Wilmer L.L.P.
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101
Attention: Brian D. Cunningham, Esq.

11. Miscellaneous.

(a) Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Lender assigns the Deed of Trust, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

(b) Entire Agreement. This Agreement constitutes the entire agreement among Landlord, Tenant and Lender regarding the rights and obligations of Landlord, Tenant and Lender as to the subject matter of this Agreement.

(c) Interaction with Lease and with Deed of Trust. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for delivery of nondisturbance agreements by the holder of the Deed of Trust.

(d) Lender's Rights and Obligations. Except as expressly provided for in this Agreement, Lender shall have no obligations to Tenant with respect to the Lease. If an attornment occurs pursuant to this Agreement, then all rights and obligations of Lender under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement, or the amendments to the Lease set forth herein.

(e) Interpretation; Governing Law. The interpretation, validity, and enforcement of this Agreement shall be governed by and construed under the internal laws of State of Utah, excluding such state's principles of conflicts of law.

(f) Amendments. This Agreement may be amended, discharged, or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

(g) Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(h) Lender's Representation. Lender represents that Lender has full authority to enter into this Agreement, and Lender's entry into this Agreement has been duly authorized by all necessary actions.

NOTICE: THIS AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR LEASE TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR PURPOSES OTHER THAN IMPROVEMENT OF THE PROPERTY.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SHINY SHELL – PIONEER CROSSING, LLC
a Utah limited liability company

By: _____
Name: Jared M. Richards
Title: Manager

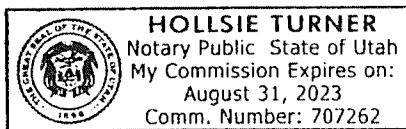
"Landlord"

STATE OF UTAH)
: ss.
County of Salt Lake)

On this 22 day of August, in the year 2022, before me Hollsie Turner, a notary public, personally appeared Jared M. Richards, an individual, the Manager of **SHINY SHELL – PIONEER CROSSING, LLC**, a Utah limited liability company, on behalf of said limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.

Hollsie Turner
Notary Signature

[Signatures Continue on Following Pages]



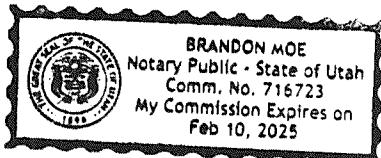
BDB OIL CO
a Utah corporation

By: _____
Name: Gary Peterson
Title: President

"Tenant"

STATE OF UTAH)
County of Salt Lake ss.

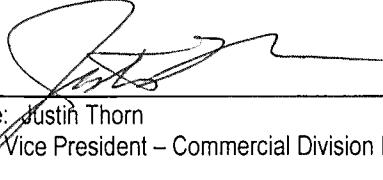
On this 19 day of August, in the year 2022, before me Brandon Moe, a notary public, personally appeared Gary Peterson, an individual, the President of **BDB OIL CO**, a Utah corporation, on behalf of said corporation, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.



Notary Signature

[Signatures Continue on Following Page]

WASHINGTON FEDERAL BANK
a Washington state chartered commercial bank

By: 

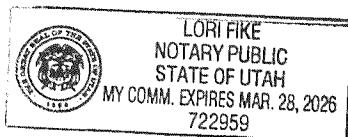
Name: Justin Thorn

Title: Vice President – Commercial Division Manager

"Lender"

STATE OF UTAH)
: ss.
County of Salt Lake)

On this 23 day of August, in the year 2022, before me Lori Fike, a notary public, personally appeared Justin Thorn, in individual, acting in his capacity as a Vice President – Commercial Division Manager of Washington Federal Bank, a Washington state chartered commercial bank, on behalf of said commercial bank, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.





Notary Signature

**EXHIBIT A
LEGAL DESCRIPTION**

That certain real property located in Utah County, Utah, being more particularly described as follows:

Lot 1, FIVE SUBDIVISION, a Commercial Development, according to the official plat thereof, on file and of record in the office of the Utah County Recorder, State of Utah.

Tax Serial Number: 39-280-0001

EXHIBIT B

CONSENT OF LEASE GUARANTOR

This Consent is attached to that certain Subordination, Non-Disturbance and Attornment Agreement dated August 25 2022, signed by **SHINY SHELL - PIONEER HOLDINGS, LLC**, a Utah limited liability company ("*Landlord*"), and **BDB OIL CO**, a Utah corporation ("*Tenant*"). The undersigned is the guarantor of Tenant's obligations under the Lease referred to in the Subordination, Non-Disturbance and Attornment Agreement dated August 25 2022 (the "**Guaranty**"). The undersigned hereby consents to the Subordination, Non-Disturbance and Attornment Agreement and acknowledges that the Guaranty is in full force and effect and that the execution and enforcement of the Subordination, Non-Disturbance and Attornment Agreement shall not affect or impair, in any respect, the obligations of the undersigned under the Guaranty.

GUARANTOR:



Name: John Cloward

[Notary continues on following pages.]

STATE OF ARIZONA)
: SS.
County of Marioppy)

On this 25th day of August, in the year 2022, before me Blake Tibbetts, a notary public, personally appeared John Cloward, an individual, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he/she executed the same, and acknowledged he/she executed the same.

Blake Tibbetts

Notary Signature

