

MTCT9352-KR
Petco
9125 Rehco Road
San Diego, CA 92121
Attn: Tracie Beck
Store # 1232

2007-014342
Klamath County, Oregon



08/14/2007 03:28:38 PM

Fee: \$46.00

SUBORDINATION, ATTORNMENT
AND NON-DISTURBANCE AGREEMENT

STATE OF OREGON
COUNTY OF KLAMATH

KNOW ALL MEN BY THESE PRESENTS:

THIS SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT (this "Agreement") is entered into to and be effective the 12th day of July, 2007 by and between **PETCO ANIMAL SUPPLIES STORES, INC.**, hereinafter called "Tenant," and Wells Fargo Bank, N.A., hereinafter called "Lender".

RECITALS:

WHEREAS, Tenant is the Tenant under that certain Lease Agreement, including all renewals, extensions, amendments and modifications, heretofore or hereafter made (collectively, the "Lease"), dated July 7, 2006, between Tenant and Klamath-Jefferson LLC ("Borrower"), as Landlord, covering approximately 15,300 square feet of rentable space situated at Klamath Falls Oregon, such premises being more particularly described in *Exhibit "A-1"*, attached hereto and incorporated herein by reference for all purposes ("the Premises").

WHEREAS, Borrower, has heretofore obtained or is applying from Lender a mortgage loan secured by a deed of trust from Borrower to Lender (the "Mortgage"), covering, among other property, the Premises, which Mortgage is recorded in Volume 2001, Page 17012918 of the Real Property Records of KLAMATH County.

WHEREAS, Tenant desires to obtain assurances from Lender that its quiet possession of the Premises will not be disturbed by reason of, or in the event of foreclosure of the Mortgage, or otherwise; and

WHEREAS, Lender is willing to provide to Tenant such assurance by executing and delivering to Tenant this Agreement.

AGREEMENT:

NOW, THEREFORE, for and in consideration of the sum of ten dollars (\$10.00) paid by Tenant to Lender, the mutual covenants and agreements herein contained, and other good and valuable consideration the receipt of which is hereby acknowledged, Tenant and Lender hereby agree and covenant as follows:

1. The Lease and estate conveyed thereby are and shall at all times continue to be subject and subordinate in all respects to the Mortgage and to all renewals, modifications and extensions thereof, subject to the terms and conditions hereinafter set forth in this Agreement.
2. So long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the other terms, covenants or conditions of the Lease on Tenant's part to be performed, (i) the term of the Lease shall not be terminated or modified in any respect and Tenant's right of quiet and exclusive possession of the Premises, and its other rights and privileges arising under the Lease, or under any extensions or renewals thereof which may be effected in accordance with any option therefor contained in the Lease, shall all be fully recognized and protected by Lender and shall not be disturbed, canceled, terminated, diminished, or otherwise interfered with by Lender under any circumstances and Tenant's occupancy shall not be disturbed by Lender during the term of the Lease, or any extensions or renewals thereof, (ii) Lender will be bound by the terms of the Lease, and (iii) Lender will not join Tenant as a party defendant in any action or proceeding to foreclose the Mortgage, or any extension, renewal, consolidation or replacement thereof.

3. If the interests of Landlord shall be acquired by Lender by reason of foreclosure of the Mortgage, or by trustee's sale, or by any other proceedings brought to enforce the rights of the holder of the Mortgage, by deed in lieu of foreclosure or by any other method, or in the event the Premises shall be purchased at such a foreclosure by a third party, and Lender or such third party succeeds to the interests of Landlord under the Lease, the Lease and the rights of Tenant thereunder shall continue in full force and effect and shall not be terminated or disturbed except in accordance with the terms of the Lease. Tenant shall be bound to Lender or such third party under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, and any extensions or renewals thereof which may be effected in accordance with any option therefor contained in the Lease, with the same force and effect as if Lender or such third party were the lessor under the Lease and Tenant does hereby attorn to Lender or such third party, as its lessor, said attornment to be effective and self-operative without the execution of any other instruments on the part of any party hereto, immediately upon Lender or such third party succeeding to the interest of Landlord under the Lease, provided, however, that Tenant shall be under no obligation to pay rent to Lender or such third party until Tenant receives written notice from Lender or such third party that Lender or such third party has succeeded to the interests of Landlord under the Lease, and that all future rental payments should be paid to the address set forth in such notice. The respective rights and obligations of Tenant and Lender, or such third party, upon such attornment, to the extent of the then remaining balance of the term of the Lease, and any extensions or renewals thereof, shall be and are the same as now set forth in the Lease, it being the intention of the parties hereto for this purpose to incorporate the Lease into this Agreement by reference, with the same force and effect as if set forth at length herein.
4. If Lender or a third party shall succeed to the interests of Borrower under the Lease ("New Owner"), Lender or such third party shall be bound to Tenant under all of the terms, covenants and conditions of the Lease and Tenant shall have the same remedies against Lender or such third party for the breach of any covenant, provision or agreement contained in the Lease that Tenant might have had under the Lease against Borrower if Lender or such third party had not succeeded to the interests of Borrower; provided, however, that Lender or such third party shall not be:
- a. liable for any act or omission of any prior landlord (including Borrower); or
 - b. bound by any rent or additional rent (but not including Security Deposit) which Tenant might have paid for more than the current month to any prior landlord (including Borrower), and all such rent shall remain due and owing notwithstanding such advance payment;
 - c. New Owner shall not be subject to any offsets or defenses which Tenant may have against any prior landlord under the Lease, including, without limitation, Borrower, except where such offsets or defenses arise out of a default of the prior landlord which is continuing at the time New Owner acquires title to the leased premises and New Owner fails to cure same after receiving notice thereof. However, nothing contained in this agreement shall constitute a waiver or a release of Tenant's rights and/or remedies with respect to any matters that may be disclosed pursuant to an audit, inspection or examination of the books and records of Landlord (or those acting under the authority or at the direction of Landlord) as provided in the Lease, including, without limitation, with respect to taxes and common area maintenance expenses; notwithstanding that the foregoing might arise subsequent to the date of this agreement, and further notwithstanding that the exercise by Tenant of any such rights and/or remedies may relate to matters preceding the date of this agreement; and
 - d. New Owner shall not be liable for any obligations of landlord accruing under the Lease following any subsequent transfer of the title to the leased premises by New Owner
5. Borrower and Tenant may, from time to time, modify or amend the Lease in the ordinary course of business without Lender's written consent or approval.
6. This Agreement may not be modified orally or in any other manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. Tenant further agrees to send to Lender at the following address copies of those notices given to Borrower pursuant to the terms of the aforesaid Lease which relate to Borrower's or Tenant's default, insurance, casualty and condemnation matters at the same time such notice is given to Borrower:

Attention:

Wells Fargo Bank, N.A.
1320 Willow Pass Road Suite 205
Concord, CA 94520
Fax No: (925) 691-5249

7. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, successors and assigns, it being expressly understood that all references herein to Lender shall be deemed to include not only Lender, but also its legal representatives, successors and assigns, and all subsequent owners of the Premises acquiring title thereto from or through Lender.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their proper officers or representatives to be effective as of the day and year first above written.

LENDER:

Wells Fargo Bank,
a National association

By: June Errington

Its: June Errington
Vice President

Date: 8-10-07

TENANT:

PETCO ANIMAL SUPPLIES STORES, INC.,
a Delaware corporation

By: William M. Woodard
~~James Lampassi~~ William M. Woodard

Its: Sr Vice President Real Estate

Date: 6-7-07

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN DIEGO

SS.

On 6-7-2007

Date

before me,

TRACIE L. BECK Notary Public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

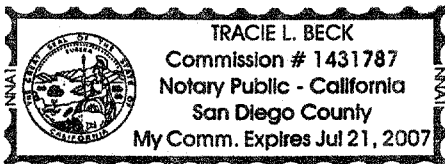
personally appeared

William M. Woodward

Name(s) of Signer(s)

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Tracie L. Beck

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

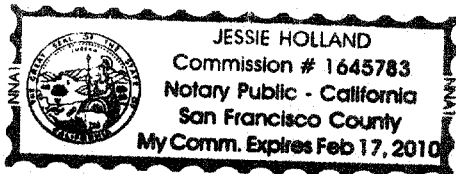
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OF SIGNER
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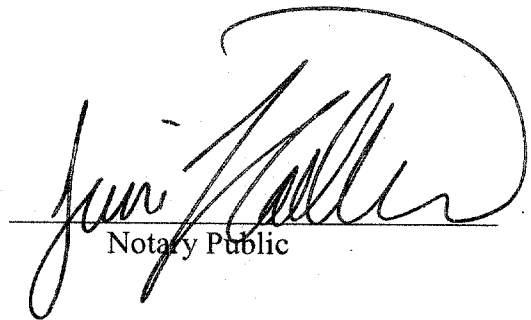
CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)
) SS.
County of San Francisco)

On August 10, 2007, before me, Jessie Holland, Notary Public, personally appeared June Errinton, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.




Notary Public

Place Notary Seal above

LEGAL DESCRIPTION

Description of Land. The Land referred to in this Security Instrument is situated in the County of Klamath, State of Oregon, and is described as follows:

Parcel 2 of Land Partition No. 48-05, said Land Partition being a replat of a portion of Lots 34 and 44 of Enterprise Tracts located in the West 1/2 of the NW1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon. TOGETHER WITH a non-exclusive Reciprocal Easement for pedestrian and vehicular ingress and egress granted in Volume M95, Page 33582, Microfilm records of Klamath County, Oregon.

TOGETHER WITH those non-exclusive easements granted in that certain Declaration of Easements, Covenants, Conditions and Restrictions recorded December 21, 2005, in Volume M05, Page 71541, Microfilm Records of Klamath County, Oregon.

The assessor's real property tax account number for the Land is 3909-003BC-00901-000.