

2012-004451

Klamath County, Oregon



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Fee: \$92.00

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WHEN RECORDED RETURN TO:
MECHANICS BANK
725 ALFRED NOBEL DRIVE
HERCULES, CA 94547-5610

**SUBORDINATION, ACKNOWLEDGMENT OF LEASE ASSIGNMENT,
NON- DISTURBANCE AND ATTORNMENT AGREEMENT**

PARTIES: LANDLORD: Argo K Falls, LLC, an Oregon limited liability company and
TRV Properties, LLC, an Oregon limited liability company
c/o Argonaut Investments, LLC
770 Tamalpais Drive, Suite 401-B
Corte Madera, CA 94925

TENANT: Sherm's Thunderbird Market, Inc.
753 S. Grape St.
Medford, OR 97501

BANK: MECHANICS BANK, a California banking corporation
725 Alfred Nobel Drive
Hercules, CA 94547-5610

This Subordination, Acknowledgment of Lease Assignment, Non-Disturbance and Attornment Agreement ("Agreement") is made and entered into this 26th day of April, 2012 by and among Landlord, Tenant and Bank.

WITNESSETH

WHEREAS, Landlord is the owner of a retail center, situated in the City of Klamath Falls, County of Klamath, State of Oregon, commonly known as 1877 Avalon Street, Klamath Falls, OR, and more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein as though set forth in full (the "Property"), which Exhibit describes the real property, improvements and appurtenant rights owned by Landlord: and

WHEREAS, K Falls One, LLC, an Oregon limited liability company ("Original Landlord") and Tenant entered into a Lease Agreement dated as of November 10, 2005, as modified by an Amendment of Lease dated as of February 11, 2006 (the "Lease"), whereby Tenant was granted a leasehold interest in and to the Property known as 1877 Avalon Street, Klamath Falls, OR consisting of approximately 67,000 rentable square feet, plus 4,740 square feet of outdoor storage space (the "Premises"); and

WHEREAS, Landlord has received a loan commitment from Bank, whereby Bank has made, or agreed to make a loan to Landlord which has been, or will be, secured by a deed of trust on the Property, and all improvements thereon, and

WHEREAS, Landlord has executed, or proposes to execute, a deed of trust and an assignment of leases and rents securing, among other things, a promissory note covering the Property and all improvements thereon, in favor of Bank, which note is payable with interest upon the terms and conditions described therein (the "Loan"). Said deed of trust is to be recorded concurrently herewith in the records of the County Recorder of Klamath County, Oregon. In making the Loan, Bank is relying in part upon the statements, acknowledgments, representations and agreements set forth in this Agreement. The deed of trust and assignment of rents and promissory notes, described in this paragraph shall hereinafter be referred to collectively as the "Deed of Trust" and "Note", respectively; and

WHEREAS, as a condition of making the Loan secured by the Deed of Trust, Bank requires that all leasehold interest held by Tenant with respect to said Property, be subordinate to the lien of the Deed of Trust securing the Note from Landlord to Bank; and

WHEREAS, in compliance with the terms of the Lease, Tenant has agreed that Landlord has the right to place a deed of trust and assignment of rents on and against the Tenant's leasehold interest and that such deed of trust and assignment of rents shall be superior in all respects to Tenant's leasehold interest; and that Tenant shall, upon Landlord's request, execute such documents as Landlord or Bank may require to evidence the subordination of the Lease and Tenant's interest therein to any such deed of trust and assignment of rents.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Subordination of the Lease: Tenant hereby declares and agrees that Tenant's leasehold interest in the entire estate created thereby is, and shall be, subordinate, subject to and inferior to the indebtedness of Landlord to Bank as evidenced by the Note and further evidenced by the Deed of Trust given by Landlord to Bank as security therefor, and such subordination shall extend to and include all renewals, modifications, consolidations, replacements and extension of said Deed of Trust to the full extent of the principal sums secured thereby, including any advances made by Bank to Landlord thereunder, together with interest thereon.
2. Notice to Bank: So long as the Deed of Trust shall remain a lien on the leased Premises, Tenant agrees simultaneously with the giving of any notice to Landlord, which is required to be given by the terms of the Lease, to give a duplicate copy of any such notice to Bank. Further, Tenant agrees that if Landlord defaults in the performance of Landlord's covenants under the Lease and if such default allows Tenant to cancel or surrender said Lease, Bank may cure said default with the same effect as if cured by Landlord, and if necessary, enter upon the Premises for the purpose of curing any such default. The giving of any such notice to Landlord shall not be properly given under the terms of the Lease and shall be of no force and effect until a duplicate copy thereof shall also have been given to the Bank pursuant to the terms of this paragraph. Tenant further acknowledges that the provisions of subsection 39(f) of the Lease shall apply to any notice and cure of Landlord defaults by Bank.

3. Non-Disturbance: Notwithstanding the foregoing, as long as Tenant is not in default beyond any applicable cure periods in payment of rent or additional rent, or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession of the leased Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option thereof in the Lease, shall not be diminished or interfered with by Bank, and Tenant's occupancy of the leased Premises shall not be disturbed by Bank for any reason whatsoever during the term of the Lease or any extensions or renewals thereof. If Tenant is not in default in the payment of rent or additional rent or in the performance of the terms, covenants and conditions of the Lease on Tenant's part to be performed, Bank will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease.
4. Attornment: If the interest of Landlord shall be transferred to and owned by any person or entity (including but not limited to Bank) by reason of foreclosure, deed in lieu of foreclosure or other proceeding instituted or action taken under the Deed of Trust, Tenant shall be bound to such transferee and such transferee's successors and assigns (collectively, "Transferee") under all of the terms, covenants and conditions of the Lease for the period of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any options thereof in the Lease, with the same force and effect as if Transferee were the Landlord under the Lease, and Tenant does hereby attorn to Transferee as its Landlord, said attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto, immediately upon Transferee succeeding to the interests of the Landlord under the Lease. The respective rights and obligations of Tenant and Transferee upon such attornment to the extent of the then remaining balance of the term of the Lease, and any such extensions and renewals, shall be and are the same as now set forth therein, it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference, with the same force and effect as set forth herein. In the event that Transferee shall, in accordance with the foregoing, succeed to the interest of Landlord under the Lease, Transferee agrees to be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, from and after such event, have the same remedies against Transferee for the breach of any agreement contained in the Lease that Tenant might have had under the Lease against Landlord if Transferee had not succeeded to the interest of Landlord. Tenant reserves its rights to any and all claims or causes of action against such prior landlord for prior losses or damages.
5. Assignment: Tenant has notice that the Lease and the rent and all other sums due thereunder have been or will be assigned to Bank as security for the Note and Tenant consents to that assignment in favor of Bank.
6. Modification, Termination and Cancellation: Tenant shall not consent to any modification, termination or cancellation of the Lease without Bank's prior written consent.
7. Advance Rents: Tenant shall make no payments or prepayments of rent more than one (1) month in advance of the time when the same became due under the terms of the Lease.

8. Notices: All communications and notices required or permitted hereunder, or pursuant to the Note, Deed of Trust or Lease, shall be dispatched by United States registered or certified mail, with return receipt requested, postage prepaid, addressed to the other parties as designated on page one hereof, or to such other addresses as any party may from time to time designate in writing to the other parties hereto.
9. Inconsistencies: This Agreement supersedes any inconsistent provisions under the terms of the Lease.
10. Binding Effect: This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and shall be governed and construed in accordance with the laws of the State of Oregon; provided that Tenant's interest under this Agreement may not be assigned or transferred without Bank's prior written consent, which consent shall not be unreasonably withheld.
11. Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute and be construed as one and the same instrument.


(Signatures on next page.)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first herein above set forth.

LANDLORD: Argo K Falls, LLC, an Oregon
limited liability company

By: Argonaut Investments, LLC, a Delaware
limited liability company (with respect to
Series 10)


Its: Manager

By: 
Stephen B. Jaeger, Manager

TRV Properties, LLC, an Oregon
limited liability company

By: Argonaut Investments, LLC, a Delaware
limited liability company (with respect to
Series 10)

Its: Manager

By: 
Stephen B. Jaeger, Manager

TENANT: Sherm's Thunderbird Market, Inc.

By: _____
Name: _____
Title: _____

BANK: MECHANICS BANK
a California banking corporation

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first herein above set forth.

LANDLORD: Argo K Falls, LLC, an Oregon
limited liability company

By: Argonaut Investments, LLC, a Delaware
limited liability company (with respect to
Series 10)

Its: Manager

By: _____
Stephen B. Jaeger, Manager

TRV Properties, LLC, an Oregon
limited liability company

By: Argonaut Investments, LLC, a Delaware
limited liability company (with respect to
Series ____)

Its: Manager

By: _____
Stephen B. Jaeger, Manager

TENANT: Sherm's Thunderbird Market, Inc.

By: Bob Ames
Name: Bob Ames
Title: General Manager

BANK: MECHANICS BANK
a California banking corporation

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first herein above set forth.

LANDLORD: Argo K Falls, LLC, an Oregon
limited liability company

By: Argonaut Investments, LLC, a Delaware
limited liability company (with respect to
Series 10)

Its: Manager

By: _____
Stephen B. Jaeger, Manager

TRV Properties, LLC, an Oregon
limited liability company

By: Argonaut Investments, LLC, a Delaware
limited liability company (with respect to
Series ____)

Its: Manager

By: _____
Stephen B. Jaeger, Manager

TENANT: Sherm's Thunderbird Market, Inc.

By: _____
Name: _____
Title: _____

BANK: MECHANICS BANK
a California banking corporation

By: _____
Name: Aaron Nissim
Title: Vice President

State of California

County of MARIN

SS.

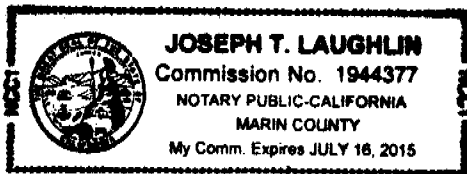
On APRIL 26, 2012 before me JOSEPH T. LAUGHLIN,
personally appeared STEPHEN B. JAEGER who
proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) are subscribed to the within
instrument and acknowledged to me that they executed the
same in their authorized capacity(ies), and that by their
signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of
the State of California that the foregoing paragraph is true and
correct.

WITNESS my hand and official seal,

Signature

Joseph T. Laughlin



(SEAL)

State of California

County of MARIN

SS.

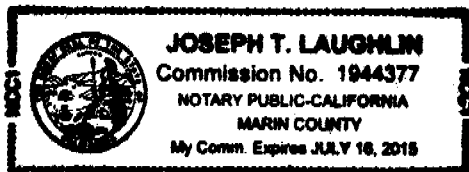
On APRIL 26, 2012 before me JOSEPH T. LAUGHLIN,
personally appeared STEPHEN B. JAEGER who
proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) are subscribed to the within
instrument and acknowledged to me that they executed the
same in their authorized capacity(ies), and that by their
signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of
the State of California that the foregoing paragraph is true and
correct.

WITNESS my hand and official seal,

Signature

Joseph T. Laughlin



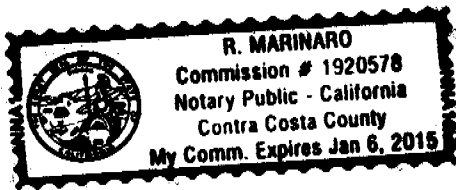
(SEAL)

State of California

County of Contra Costa

SS.

On April 26, 2012 before me R. Marinaro,
personally appeared Aaron Mission who
proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) are subscribed to the within
instrument and acknowledged to me that they executed the
same in their authorized capacity(ies), and that by their
signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of
the State of California that the foregoing paragraph is true and
correct.

WITNESS my hand and official seal,

Signature

R. Marinaro

(SEAL)

State of Oregon

County of Jackson

SS.

On 4-26-12 before me Cathleen M. Fuller,
personally appeared Bob Ames who
proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) are subscribed to the within
instrument and acknowledged to me that they executed the
same in their authorized capacity(ies), and that by their
signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of
the State of Oregon that the foregoing paragraph is true and
correct.

WITNESS my hand and official seal,

Signature Cathleen M. Fuller



(SEAL)

EXHIBIT 'A'

BEGINNING AT THE INITIAL POINT MARKED BY A 5/8" IRON ROD WITH A 1 1/2 " ALUMINUM CAP PER KLAMATH COUNTY SURVEY NO. 1441, RE-MONUMENTED WITH A BRASS SCREW AND WASHER MARKED "W&H PACIFIC", AND LOCATED AT THE INTERSECTION OF THE NORTHEASTERLY RIGHT-OF-WAY LINE OF PERSHING WAY WITH THE WESTERLY RIGHT-OF-WAY LINE OF AUSTIN STREET, SAID INITIAL POINT BEARS NORTH 54°55'34" EAST 1860.10 FEET FROM A FOUND 2 1/2" BRASS CAP IN A MONUMENT BOX MARKING THE ONE-QUARTER CORNER COMMON TO SECTIONS 3 AND 4 OF SAID TOWNSHIP AND RANGE; THENCE NORTH 55°53'18" WEST ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE 880.81 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF AVALON STREET; THENCE NORTH 30°35'30" EAST ALONG SAID EASTERLY LINE 1001.49 FEET; THENCE NORTH 89°51'08" EAST 110.58 FEET; THENCE NORTH 00°10'38" WEST 150.05 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF SHASTA WAY; THENCE NORTH 89°49'57" EAST ALONG SAID SOUTH LINE 376.79 FEET TO SAID WESTERLY RIGHT-OF-WAY LINE; THENCE SOUTH 00°19'16" WEST ALONG SAID WESTERLY LINE 1,122.19 FEET TO AN ANGLE POINT IN SAID RIGHT-OF-WAY LINE; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE SOUTH 34°06'49" WEST 465.41 FEET TO SAID NORTHEASTERLY RIGHT-OF-WAY LINE AND THE INITIAL POINT.

ALSO KNOWN AS LOTS 1 THRU 15 AND COMMON AREAS A AND B OF TRACT 1522 KLAMATH MALL; AND PARCELS 2 AND 3 OF LAND PARTITION 70-07, A REPLAT OF ALL THAT PORTION OF TRACTS 32, 33A AND 36 OF ENTERPRISE TRACTS, SITUATED IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 39 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, CITY OF KLAMATH FALLS, KLAMATH COUNTY, OREGON.

TAX PARCEL NUMBER: R896297 AND R896298 AND R896299 AND R896300 AND R896301 AND R896302 AND R896303 AND R896304 AND R896305 AND R896306 AND R896307 AND R894824 AND R894825 AND R896308 AND R896309 AND R896310 AND R896311 AND R896312 AND R896313