

2022-012092

Klamath County, Oregon

10/07/2022 03:15:01 PM

Fee: \$127.00

RECORDING REQUESTED BY:

Poppy Bank
438 First Street, Suite 200
Santa Rosa, California 95401

WHEN RECORDED RETURN TO:

Poppy Bank
438 First Street, Suite 200
Santa Rosa, California 95401
Attention: Loan Operations
Loan Number:

(Space above this line for Recorder's use)

SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT

THIS SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT ("Agreement"), is dated for reference purposes and entered into as of 10/3, 2022, by and among **POPPY BANK**, a California state banking corporation ("Bank"), **ARGO KLAMATH TWO, LLC**, a Delaware limited liability company, whose address is 101 Larkspur Landing Circle, Suite 120, Larkspur, California 94939, Attention: Ross Guttenberg ("Landlord"), and **PETSMART LLC**, a Delaware limited liability company, whose address is 19601 N. 27th Avenue, Phoenix, Arizona 85027, Attention: Legal Department (Real Estate Group) ("Tenant").

1. RECITALS

- a. Landlord is the owner of that certain real property commonly known as Klamath Falls Town Center, located in Klamath, Oregon, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference ("Real Property").
- b. Landlord and Tenant have entered into that certain (unrecorded) Shopping Center Lease Agreement dated 9/21, 2022 ("Lease"), covering all or a portion of the Real Property more particularly described in the Lease ("Premises").
- c. Bank has made, or is about to make, a loan to Landlord ("Loan"). Repayment of the Loan is or will be secured by, among other things, a deed of trust encumbering the Real Property which is to be recorded in the official records of the county in which the Real Property is located ("Deed of Trust").
- d. It is to the mutual benefit of the parties hereto that Bank make the Loan to Landlord.
- e. Bank has conditioned its commitment to make the Loan on the execution and delivery to Bank of this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL BENEFITS ACCRUING TO THE PARTIES HERETO AND OTHER VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH CONSIDERATION IS HEREBY ACKNOWLEDGED, AND IN ORDER TO INDUCE BANK TO MAKE THE LOAN TO LANDLORD, IT IS HEREBY DECLARED, UNDERSTOOD AND AGREED AS FOLLOWS:

2. SUBORDINATION

- a. **Subordination of Lease.** Tenant, for itself, its successors and its assigns, hereby covenants and agrees that the Lease and all of Tenant's rights thereunder shall be and is hereby made subordinate to the lien of the Deed of Trust and to any extensions, consolidations, modifications thereof and supplements thereto with the same force

and effect as if the Deed of Trust had been executed, acknowledged, delivered and recorded prior to the execution and delivery of the Lease. The foregoing notwithstanding, and notwithstanding anything in the Deed of Trust or other Loan documents, in no event will any of Tenant's trade fixtures, inventory, equipment, furniture and furnishings, accounts, books or records or other assets be or become subject or subordinate to the security interest or lien in favor of Bank.

b. Intentionally Deleted.

c. Bank Not Liable for Security Deposit. Tenant acknowledges and agrees that should Bank or any third party take title to the Property either as a result of foreclosure or by deed in lieu of foreclosure, Bank or such third party shall not be liable for the repayment or the return of any security deposit (if any) paid by Tenant to Landlord under the Lease.

d. No Credit For Prepaid Rent. Tenant acknowledges and agrees that should Bank or any third party take title to the Property either as a result of foreclosure or by deed in lieu of foreclosure, Tenant shall not receive credit for any rent paid by Tenant more than thirty (30) days in advance (if any) and that Tenant shall be liable for all rent payable under the Lease, notwithstanding any such prepayment of rent.

3. NON-DISTURBANCE

a. Litigation. In the event commences an action for judicial foreclosure of the Deed of Trust, Bank agrees that it will not join Tenant in any summary proceedings so long as Tenant is not in default (beyond applicable cure periods) under any of the terms, covenants or conditions of the Lease.

b. Power of Sale or Judicial Foreclosure. It is the express intent of the parties hereto that a foreclosure of the Deed of Trust, either as a result of the entry by a court of appropriate jurisdiction of an order judicial foreclosure of the Deed of Trust, the exercise of the power of sale by the trustee named in the Deed of Trust, or the exercise of any other remedies provided in the Deed of Trust or provided in any other instrument securing the Loan, or the delivery of a deed to the Real Property in lieu of foreclosure, shall not, of itself, result in the termination of or otherwise affect the Lease, but Bank, any assignee of Bank or any purchaser from Bank, upon foreclosure of the Deed of Trust or conveyance in lieu of foreclosure shall thereby automatically succeed to the position of Landlord under the Lease.

c. Tenant's Possession Not To Be Disturbed. So long as Tenant is not in default (beyond applicable cure periods) with respect to any of Tenant's obligations under the Lease, including, without limitation, the payment of rent or additional rent or the performance of the other terms, covenants or conditions of the Lease, Tenant's possession and use of the Premises, and Tenant's rights and privileges under the Lease, including, without limitation, any extension or renewal rights, and application of insurance proceeds and condemnation awards, shall not be diminished or interfered with by Bank, any assignee of Bank or any purchaser from Bank following any foreclosure of the Deed of Trust or conveyance of the Real Property in lieu of foreclosure.

4. ATTORNMEN

a. Attornment. Tenant covenants and agrees to attorn to and to accept Bank or Bank's assignee, successor, or assign or any purchaser from Bank or from the trustee in a foreclosure sale, as Landlord under the Lease, and to be bound by and to perform all of the obligations imposed by the Lease upon Tenant including, without limitation, the payment of rent to the successor of Landlord therein. Tenant further agrees to make rental payments directly to Bank, in accordance with the terms of an Assignment of Rents Agreement or an assignment of rents provision contained in the Deed of Trust, as applicable, in the event that Bank notifies Tenant in writing that Landlord is in default in any term or condition of the obligations secured by the Deed of Trust. Landlord hereby releases and discharges Tenant of and from any liability to Landlord resulting from Tenant's payment of such rental payments to Bank in accordance with this Agreement or any other notice or instructions from Bank.

b. Succession to Position of Landlord. If, by dispossession, foreclosure, exercise of the power of sale, or otherwise, Bank, its successors or assigns, or any purchaser at a foreclosure sale or otherwise, shall come into possession of or become Landlord of the Premises, such person shall succeed to the interest of Landlord under the Lease, and, if no default (beyond applicable cure periods) then exists under the terms, conditions and provisions of the Lease, the Lease shall remain in effect as a lease of the demised Premises, together with all of the rights and privileges therein contained, between such person and Tenant for the balance of the term of the Lease. Bank, its successors or assigns or any purchaser at a foreclosure sale or otherwise will be bound by all of the obligations imposed by the Lease upon the Landlord therein; provided, however, that Bank, its successors or assigns or any purchaser at a foreclosure sale or otherwise, shall not be:

- (1) Liable for any act or omission of a prior landlord (including Landlord); or
- (2) Subject to any offsets or defense which Tenant might have against any prior landlord (including Landlord); provided, however, the foregoing shall not limit Tenant's right to exercise against Bank, its successors or assigns or any purchaser at a foreclosure sale or otherwise any offset rights or defenses (including Lease termination rights) otherwise available to Tenant because of events occurring after the date of any foreclosure, trustee's sale or conveyance in lieu of foreclosure; or
- (3) Bound by any rent or additional rent which Tenant might have paid in advance to any prior landlord (including Landlord) for any period beyond the month in which the foreclosure or conveyance occurs; or
- (4) Bound by any agreement or modification of the Lease made without the consent of Bank, which consent shall not be unreasonably withheld, conditioned or delayed so long as the same does not reduce rent, shorten the term or materially increase the obligations of Landlord under the Lease.

Provided however, that nothing herein shall excuse Bank, its successors or assigns or any purchaser at a foreclosure sale or otherwise from liability or responsibility for, or limit any right or remedy of Tenant with respect to, any breach or default which continues from and after the date when such party obtains title to or takes possession or control of the Premises.

c. New Lease. Upon the written request of either Tenant or Bank, given to the other at the time of a foreclosure of the Deed of Trust or conveyance in lieu of foreclosure, and if no default (beyond applicable cure periods) then exists under the terms, conditions and provisions of the Lease, Tenant and Bank or Bank's successor in interest shall execute a lease of the Premises upon the same terms and conditions as the Lease between Landlord and Tenant, which lease shall cover any unexpired term of the Lease (and renewal periods expressly granted to Tenant thereunder) existing prior to such foreclosure, trustee's sale or conveyance in lieu of foreclosure.

d. Foreclosure. Tenant hereby covenants and agrees that, notwithstanding any provisions to the contrary in the Lease, Bank may exercise all rights and remedies granted to it under the Deed of Trust to foreclose its interest and dispose of the Real Property without the consent of or notice to Tenant.

e. Termination of Lease. Concurrently upon Tenant's receipt or delivery of any notice of termination or default under the Lease, Tenant will deliver a complete and correct copy of such notice to Bank at the address set forth below.

5. MISCELLANEOUS

a. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Bank and the parties hereto and their respective successors and assigns upon recordation by or on behalf of Bank.

b. Notices. Except as otherwise provided herein, any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be personally served by messenger, or sent by a commercial overnight delivery service (such as Federal Express), or by certified mail, return receipt requested, and shall be deemed given on the date actually received if served by messenger, or on the next business day after

deposit with an overnight delivery service, or on the date of receipt as shown on the return receipt if sent by certified mail. The addresses of the parties to which notices and other communications shall be sent (until notice of a change thereof is served as provided herein) are set forth below. Any party to this Agreement may change its address for giving notices or demands hereunder by written notice of such change to the other party in accordance with the provisions hereof.

c. Construction. The terms of this Agreement shall supersede and contravene the terms of the Lease to the extent that the terms of this Agreement are inconsistent with the terms of the Lease. In all other respects this Agreement shall be construed consistently with the terms of the Lease.

d. Prior Agreements. This Agreement shall be the whole and only agreement between the parties hereto and shall supersede and cancel any prior agreements, including without limitation provisions contained in the Lease which may or do provide for the subordination of the Lease and leasehold interest of Tenant to a deed or deeds of trust or a mortgage or mortgages to be thereafter executed or which restrict the right of the beneficiary of any deed of trust from foreclosing its interest in the Real Property or to sell the Real Property obtained through a foreclosure sale.

e. Severability. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

f. Headings. All section headings and section numbers have been set forth herein for convenience of reference only, and shall not limit or affect the meaning or interpretation of any section hereof.

g. Governance. This Agreement shall be governed and interpreted in accordance with the laws of the State in which the Real Property is located.

h. Attorneys' Fees. In the event any party to this Agreement shall be required to commence any action or proceeding against any other party by reason of any breach or claimed breach of any provision of this Agreement, to commence any action in any way connected with this Agreement, or to seek a judicial declaration of rights under this Agreement, the party prevailing in such action or proceeding shall be entitled to recover from the other party, or parties, the prevailing party's reasonable attorneys' fees and costs including, without limitation, all witness fees and associated expenses, including matters on appeal whether or not the proceeding or action proceeds to judgment.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, this Agreement is executed on behalf of the parties' duly authorized representatives on the date(s) indicated below and effective as of the date set forth above.

BANK:

POPPY BANK,

a California state banking corporation

By  _____

Name SCOTT SHAPIRO

Title VP

Date 10/3, 2022

LANDLORD:

ARGO KLAMATH TWO, LLC,

a Delaware limited liability company

By: Argo K Falls, LLC,
an Oregon limited liability company, its Manager

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

By _____

Name _____

Title _____

Date _____, 2022

TENANT:

PETSMART LLC,

a Delaware limited liability company

By _____

Name Byron Ayle

Title Senior Director of Lease Administration

Date _____, 2022

ALL SIGNATURES MUST BE NOTARIZED

CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

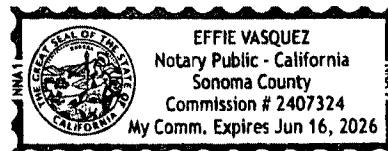
State of) California
County of) Sonoma

On October 3, 2022 before me, Effie Vasquez, Notary Public, personally appeared Scott Lynch Shapiro who 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.

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.

Effie Vasquez
Notary Signature



IN WITNESS WHEREOF, this Agreement is executed on behalf of the parties' duly authorized representatives on the date(s) indicated below and effective as of the date set forth above.

BANK:

POPPY BANK,

a California state banking corporation

By _____

Name _____

Title _____

Date _____, 2022

LANDLORD:

ARGO KLAMATH TWO, LLC,

a Delaware limited liability company

By: Argo K Falls, LLC,
an Oregon limited liability company, its Manager

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

By _____

Name Stephen B. Tieger

Title Manager

Date September 29, 2022

TENANT:

PETSMART LLC,

a Delaware limited liability company

By _____

Name Byron Ayle

Title Senior Director of Lease Administration

Date 9/26/22, 2022

ALL SIGNATURES MUST BE NOTARIZED

CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of California

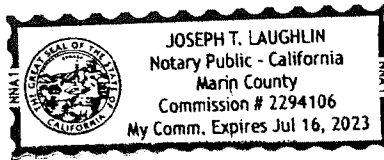
County of Marin

On September 29, 2022 before me, Joseph T. Laughlin, Notary Public, personally appeared Stephen B. Jaeger who 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.

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.


Notary Signature



STATE OF ARIZONA

)

) ss:

COUNTY OF MARICOPA

)

The foregoing instrument was acknowledged before me this 26th day of Sept., 2022, by Byron Ayle, as Senior Director of Lease Administration of **PETSMART LLC**, a Delaware limited liability company, who being fully authorized to do so, executed the foregoing instrument on behalf of Tenant.

Teresa G. Hall
Notary Public

My Commission expires:



TERESA G. HALL
Notary Public - Arizona
Maricopa Co. / #595644
Expires 01/09/2025

EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY

Real property in the City of Klamath Falls, County of Klamath, State of Oregon, described as follows:

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.

TOGETHER WITH THOSE RIGHTS AS DESCRIBED IN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS RECORDED JANUARY 19, 2007 AS INSTRUMENT NO. 2007-001016 OF OFFICIAL RECORDS, AS AMENDED BY THAT CERTAIN FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS RECORDED OCTOBER 11, 2013 AS INSTRUMENT NO. 2013-011556 OF OFFICIAL RECORDS.