



Doc#: 0507718060
Eugene "Gene" Moore Fee: \$66.00
Cook County Recorder of Deeds
Date: 03/18/2005 11:58 AM Pg: 1 of 7

**SUBORDINATION NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS AGREEMENT, dated this 29 day of February, 2005, by and between **GE COMMERCIAL FINANCE BUSINESS PROPERTY CORPORATION**, a Delaware corporation, whose address is 10900 Northeast Fourth Street, Suite 500, Bellevue, Washington 98004, Attention: Middle Market Risk ("Lender"), **ELLIOT MEGDAL AND ALANA MEGDAL, AS CO-TRUSTEES OF THE MEGDAL FAMILY TRUST DATED JULY 2, 1996** ("Landlord") and **PETSMART, INC.**, a Delaware corporation, whose address is 19601 N. 27th Avenue, Phoenix, Arizona 85027, Attention: Vice President, Real Estate and Construction ("Tenant").

WITNESSETH:

- A. WHEREAS, Landlord and Tenant are parties to a Net Lease dated February 28, 1996, and as amended by that certain First Amendment to Net Lease dated June 23, 2003 (together, the "Lease") pertaining to certain premises (the "Premises") at 1285 E. Higgins Road, E. Schaumburg, IL; and
- B. WHEREAS, Lender has made or agreed to make a loan in the amount of Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000.00) secured by, among other things, a lien (the "Mortgage") upon the real property described in EXHIBIT A attached hereto (which includes the Premises); and
- C. WHEREAS, Tenant wishes to be assured of the continued use and occupancy of the Premises under the terms of the Lease, notwithstanding any breach or default by Landlord or the exercise of any remedies under the Mortgage; and
- D. WHEREAS, Lender wishes for Tenant to recognize and attorn to Lender in the event that Lender succeeds to the rights of the Landlord under the Lease as a result of foreclosure or otherwise.

NOW, THEREFORE, in consideration of the foregoing, and for valuable consideration, the receipt and sufficiency of which upon full execution hereof are hereby acknowledged, and the mutual undertakings hereinafter set forth, the parties hereby covenant and agree as follows:

1. **SUBORDINATION.** As set forth in this Agreement, the Lease is and shall be subject and subordinate to the lien of the Mortgage and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage, to the full extent of amounts secured thereby and interest thereon. The foregoing notwithstanding, in no event shall 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 lien in favor of Lender.

2. **NON-DISTURBANCE.** So long as the Lease has not been terminated as a result of a default by Tenant, or any assignee or sublessee (hereinafter referred to collectively as "Tenant"), beyond any applicable grace, notice and cure period, Tenant's possession, use and enjoyment of the

DK
139265 20F3
DEC

7

UNOFFICIAL COPY

Premises and the related Common Area, including but not limited to related signage, shall not be interfered with, disturbed or diminished, or otherwise affected in any manner as a result of any act or omission of Landlord, and all rights and privileges of Tenant under the Lease, and any renewals, modifications, or extensions thereof, shall be recognized by Lender and any Successor Landlord (as defined in paragraph 3 below). If any action or proceeding is commenced by Lender for the foreclosure of the Mortgage or the sale of the Premises, Tenant shall not be named as a party therein unless such joinder shall be required by law and Tenant shall not thereby be subjected or exposed to any liability, cost or expense, and such joinder shall not result in the termination of the Lease or disturb Tenant's possession, use or enjoyment of the Premises, and the foreclosure or sale in any such action or proceeding shall be made subject to all rights of Tenant under the Lease.

3. ATTORNNMENT. In the event that title to, possession of or control of the Premises or any other interest therein, which includes the right to receive payment of rent or to enforce the performance of other obligations under the Lease, is transferred as a result of any trustee's sale, judicial foreclosure, deed in lieu of foreclosure or other proceedings pursuant to the Mortgage, Tenant will attorn to the purchaser or transferee who acquires such title or other interest ("Successor Landlord") and will recognize such Successor Landlord as landlord under and subject to the terms and conditions of the Lease. Tenant hereby waives the provisions of any statute or rule of law now or hereafter in effect which might give it any right or election to terminate the Lease by reason of any such foreclosure proceeding.

4. PERFORMANCE BY TENANT. In the event that Tenant receives any notice from Lender or any Successor Landlord to pay rent or other sums or render any other performance under the Lease to such Lender or Successor Landlord, Tenant may render performance in accordance with such notice without any duty of inquiry and despite any knowledge or notice to the contrary with the same force and effect as if such payment or performance were rendered to Landlord, and Landlord hereby releases and discharges Tenant of and from any liability to Landlord resulting from Tenant's payment of such rent to Lender or any Successor Landlord in accordance with this Agreement or Lender's or any Successor Landlord's notice or instructions from Lender or any Successor Landlord.

5. SUCCESSOR LANDLORD LIABILITY. Upon transfer of the Premises to the Successor Landlord, including Lender, the Successor Landlord shall have the same rights and obligations under the Lease as the Landlord and Tenant shall have the same rights and remedies under the Lease against the Successor Landlord as existed against Landlord, including for a breach of the Lease; provided, however, that Lender or any Successor Landlord shall not:

(a) be subject to any offsets or defenses which Tenant might have against any prior landlord (including the Landlord), except for offsets arising under the Lease with respect to costs and expenses (but not damages) incurred by Tenant after Tenant has notified Lender and given Lender an opportunity to cure as provided in this Agreement, and/or offsets arising from (i) a reconciliation or year-end adjustment of an estimated rental or other charge under the Lease or (ii) an audit of Landlord's business records, as provided in the Lease; or

(b) be bound by any Base Rent which Tenant might have paid for more than one (1) month in advance; or

UNOFFICIAL COPY

(c) be obligated to reimburse Tenant for any security deposit, unless said security deposited is received by Lender; or

(d) be bound by any amendment or modification of the Lease made after the date hereof without Lender's consent, which consent shall not be unreasonably withheld, conditioned or delayed and it being agreed by Lender that consent shall be deemed given unless Lender makes objection in writing and properly noticed to Tenant within thirty (30) days from the date of Tenant's notice to Lender.

Provided however, that nothing herein shall excuse Lender or any Successor Landlord 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 Lender or such Successor Landlord obtains title to or takes possession or control of the Premises (provided Lender has received Notice of such Default in accordance with this Agreement).

6. SUCCESSOR LANDLORD LIABILITY LIMITATION. Nothing in this Agreement shall be deemed or construed to be an agreement by Lender to perform any covenant of the Landlord under the Lease, unless and until Lender becomes a Successor Landlord. If Lender becomes a Successor Landlord, then, upon any subsequent transfer of the Premises by Lender to a new owner, Lender shall have no further liability under the Lease after said transfer other than for Lender's default under the Lease during its period of ownership of the Premises.

7. NOTICE OF LANDLORD DEFAULT. Tenant shall give to the Lender, by certified or registered mail, a copy of any notice of default served upon Landlord under the Lease, respectively, at the address set forth above, and the Lender shall have the same right, but shall have no obligation, to cure any such default on behalf of the Landlord as is provided in the Lease, respectively.

8. LEASE TERMINATION. In the event Tenant notifies Lender that Tenant elects to terminate the Lease as a result of Landlord's default, the Lease shall not terminate until Lender has had a reasonable period of time after such notice in which to cure said default, not to exceed thirty (30) days ("Initial Cure Period"), which period may run concurrently with any notice or cure period given to Landlord; provided, however, that if due to the nature of the default Lender is unable to complete such cure within the Initial Cure Period, Lender shall be entitled to such additional time as may be necessary to cure such default, not to exceed thirty (30) days following the expiration of the Initial Cure Period, only if and so long as the following conditions are satisfied: (i) Lender has notified Tenant in writing of its intent to cure Landlord's default; (ii) Lender has commenced such cure within the Initial Cure Period; and (iii) Lender diligently pursues such cure to completion.

9. OTHER DOCUMENTS. Each of Lender, Landlord and Tenant agrees to reasonably execute and deliver to the others such further documents and assurances confirming the foregoing as any of such parties may reasonably request.

10. SUCCESSORS AND ASSIGNS. The terms "Lender", "Successor Landlord" and "Landlord" shall include such parties and any successors or assigns, including any successors in title to the Premises. The term "Tenant" shall include any assignee or sublessee.

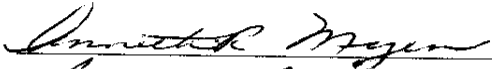
UNOFFICIAL COPY

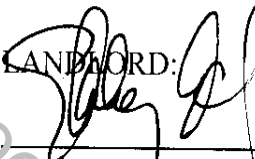
11. **CONDITION.** The parties agree that this Agreement shall be valid only once fully executed, acknowledged and delivered by all of the parties hereto.


IN WITNESS WHEREOF, the parties hereto have executed as of the date first referenced above.

LENDER:

**GE COMMERCIAL FINANCE BUSINESS
PROPERTY CORPORATION,**
a Delaware corporation

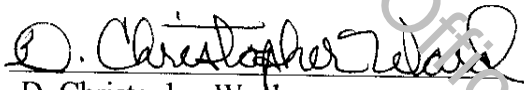
By: 
Name: Annette R. Myers
Title: Sr. Closing Analyst

By: 
Name: Elliot Megdal
Title: ELLIOT MEGDAL AS CO-TRUSTEE OF THE
MEGDAL FAMILY TRUST DATED JULY 2, 1996

By: 
Name: Alana Megdal
Title: ALANA MEGDAL AS CO-TRUSTEE OF THE
MEGDAL FAMILY TRUST DATED JULY 2, 1996

TENANT:

PETSMART, INC.,
a Delaware corporation

By: 
Name: D. Christopher Ward
Title: Senior Counsel

UNOFFICIAL COPY

STATE OF CALIFORNIA)
COUNTY OF Los Angeles) SS.

On this 25th day of February, 2005, before me, the undersigned officer, personally appeared Elliot and Alana Megdal, who acknowledged himself to be the CO-TRUSTEES of THE Megdal Family Trust dated 7/2/96 a _____, and that They as such _____ being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing such instrument in such capacity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Connie Xavier
Notary Public

My Commission Expires:
3/30/08



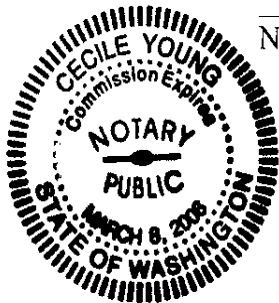
STATE OF Washington)
COUNTY OF King) SS.

On this 28th day of February, 2005, before me, the undersigned officer, personally appeared Annette R Meyer S, who acknowledged himself to be the Sr Closing Analyst of GE Commercial Finance Business Property a DELAWARE CORPORATION, and that She, as such _____ being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing such instrument in such capacity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Cecile Young
Notary Public

My Commission Expires:
3/8/2006



UNOFFICIAL COPY

STATE OF ARIZONA)
COUNTY OF MARICOPA) SS:

On this 24 day of February, 2005, before me, the undersigned officer, personally appeared D. Christopher Ward, who acknowledged himself to be the Senior Counsel of **PETsMART, INC.**, a Delaware corporation, and that he being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing such instrument in such capacity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

M. Weaver
Notary Public

My Commission Expires:



M. WEAVER
Notary Public - Arizona
Maricopa County
Expires 05/31/08

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Exhibit A

PARCEL 1:

Lot 1 in Park St. Claire Plaza Resubdivision No. 1, recorded May 2, 1995 as Document Number 95288758, and re-recorded July 7, 1995 as Document Number 95441456, being a resubdivision of Lot 2 in Park St. Claire Plaza, a subdivision of part of the Southwest quarter (1/4) of the Southwest quarter (1/4) of Section 13, Township 41 North, Range 10, East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 2:

Non-Exclusive easements appurtenant to and for the benefit of Parcel 1, aforesaid, as created by and defined in Article 2 of the Operation and Easement Agreement ("Agreement") dated April 14, 1993 and recorded May 10, 1993 as Document Number 93351020, and by Deed dated April 26, 1995 and recorded May 2, 1995 as Document Number 95288740, including, without limitation, the following:

- a. Non-Exclusive Easements for ingress, egress and parking of vehicles and pedestrians over and across parking, driveway and sidewalk areas as more fully described in Article 2.1 of said Agreement;
- b. Non-Exclusive Perpetual Easements for utility lines, in, to, over, under, along and across portions of the Common Area as more fully described in Article 2.2 of said Agreement; and
- c. Non-Exclusive Easement for maintenance and replacement of footings, foundations, columns or walls inadvertently constructed beyond a common boundary line as more fully described in Article 2.3 of said Agreement.

1285 HIGGINS ROAD

07-13-306-002