

18 of 14

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Doc#: 0706526151 Fee: \$42.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 03/06/2007 03:03 PM Pg: 1 of 10

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Property Address: 9231-9239 and 9275-9277 West 159th Street Orland Hills, IL
P.I.N. #27-22-101-015, 27-22-101-021 and 27-22-101-016

PREPARED BY:
STEVEN H. MALATO
HINSHAW & CULBERTSON
222 NORTH LASALLE ST., SUITE 300
CHICAGO, IL 60601

RETURN AFTER RECORDING:
GENWORTH LIFE INSURANCE COMPANY
707 EAST MAIN STREET SUITE 1300-A
RICHMOND, VA 23219-3310

received

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**SUBORDINATION NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

10616487

THIS AGREEMENT, dated the 28 day of FEBRUARY, 2006, by and between **GENWORTH LIFE INSURANCE COMPANY**, a Delaware corporation, whose address is 707 E. Main Street, Suite 1300-A, Richmond, Virginia 23219 ("Lender"), **ORLAND TOWNE CENTER, L.L.C.**, an Illinois limited liability company, as successor-in-interest to **ORLAND TOWNE CENTER LIMITED PARTNERSHIP**, an Illinois limited partnership, whose address is c/o Mr. Tony Youshaei, First Chicago Properties & Management, Inc., 830 S. Buffalo Grove Road, Suite 105, Buffalo Grove, Illinois 60089 ("Landlord"), and **PETSMART, INC.**, a Delaware corporation, whose address is 19601 N. 27th Avenue, Phoenix, Arizona 85027, Attention: Associate General Counsel, Real Estate ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant are parties to a Shopping Center Lease dated September 22, 1993, as amended by that certain Letter Agreement dated December 3, 1993, as amended by that certain Letter Agreement dated June 10, 1994, and as amended by that certain Letter Agreement dated June 24, 1994 (collectively, the "Lease") pertaining to certain premises (the "Premises") at Orland Towne Center (the "Shopping Center") in Orland Hills, Illinois; and

WHEREAS, Lender has made or agreed to make a loan secured by, among other things, a lien (the "Mortgage") upon the real property described in Exhibit A attached hereto (which includes the Premises); and

WHEREAS, Tenant wishes to be assured of the continued use and occupancy of the Premises and related Common Area (as such terms are defined in the Lease) and pylon or other signage of the Shopping Center under the terms of the Lease, notwithstanding any breach or default by Landlord or the exercise of any remedies under the Mortgage; and

WHEREAS, Lender wishes for Tenant to recognize and attorn to Lender in the event that Lender succeeds to the rights of 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.

LANDAMERICA / MANAGED FILE
COMMERCIAL REAL ESTATE
100 N. LA SALLE STREET
SUITE 1100
CHICAGO, IL 60602

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2. **NON-DISTURBANCE.** So long as the Lease has not been terminated as a result of a default by Tenant beyond any applicable grace, notice and cure period, Tenant's possession, use and enjoyment of the 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. Compliance by Landlord with any of the terms or provisions of the Lease shall not constitute a breach of or a default under or with respect to the Mortgage or any obligation secured thereby.

3. **ATTORNMEN**T. 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 which Tenant might have against any prior landlord (including Landlord), except for offsets specifically permitted under the Lease with respect to:

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(i) "Repair Costs" (but not damages) incurred by Tenant after Tenant has notified Lender and given Lender an opportunity to cure as provided in this Agreement. For purposes hereof, "Repair Costs" shall mean the actual costs and expenses incurred by Tenant in the exercise of its rights under the Lease to make repairs to the Premises or the Shopping Center required to be but not made by Landlord; and

(ii) Common Area Expenses, Taxes, Insurance costs and Rent overpaid by Tenant to Landlord determined to be owed to Tenant from Landlord based on (y) a reconciliation or year-end adjustment of estimated payments for Common Area Expenses, Taxes, Insurance costs, or Rent paid under the Lease, or (z) an audit of Landlord's Common Area Expense, Taxes, Insurance, or Rent 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

(c) be obligated to reimburse Tenant for any security deposit, unless said security deposit 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 notified to Tenant within ninety (90) days from the date of Tenant's notice to Lender, provided, however, Lender's consent shall not be presumed or considered given by reason of a delay in reviewing and granting approval of any proposed lease or lease amendment if any such lease or lease amendment:

(i) contains, seeks to add or permits the exercise of a purchase option or right of first offer or refusal by or on behalf of the Tenant;

(ii) permits the termination of the Lease (but such limitation shall not impair any termination right Tenant may have, as of the date hereof, in the Lease, shorten the Lease Term, decrease the size of the Lease Premises, (except for Landlord and Tenant confirming the actual square footage of the Leased Premises as provided in the Lease), or postpone, delay or decrease the Rent (except for reductions in Rent as a result of confirming the actual square footage of the Leased Premises as provided in the Lease) payable by the Tenant under the Lease; or

(iii) seeks to alter any of the provisions of this Agreement.

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.

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

7. 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.

8. 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.

9. 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.

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

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[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

LENDER:

GENWORTH LIFE INSURANCE COMPANY,
a Delaware corporation

By: [Signature]
Name: J. PHILIP HART
Title: Investment Officer

LANDLORD:

ORLAND TOWNE CENTER, L.L.C.,
an Illinois limited liability company

By: Orland Towne Center, Inc,
an Illinois corporation,
its General Partner
By: [Signature]
Name: K.T. YOUSHAEL
Title: MANAGING MEMBER

TENANT:

PETSMART, INC.,
a Delaware corporation

By: [Signature]
Name: Tabatha LaVoie
Title: Real Estate Counsel

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ACKNOWLEDGEMENTS

STATE OF Virginia)
) SS:
COUNTY OF Henrico)

On this 20th day of December, 2006, before me, the undersigned officer, personally appeared J. Philip Hart, who acknowledged himself/herself to be the Investment Officer of **GENWORTH LIFE INSURANCE COMPANY**, a Delaware corporation, and that he/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.

Rose Macdonald
Notary Public

My Commission Expires:

10-31-09

STATE OF _____)
) SS:
COUNTY OF _____)

On this 27th day of November, 2006, before me, the undersigned officer, personally appeared K. T. YOUSHAEI, who acknowledged himself/herself to be the Managing Member of Orland Towne Center, Inc., an Illinois corporation, General Partner of **ORLAND TOWNE CENTER, L.L.C.**, an Illinois limited liability company, and that he/she, as such Managing Member 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.

Laverne Ponder
Notary Public

My Commission Expires:

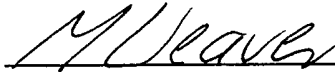
8-15-09



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STATE OF ARIZONA)
) SS:
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 22 day of November, 2006, by Tabatha LaVoie, as Real Estate Counsel of **PETSMART, INC.**, a Delaware corporation, on behalf of the Tenant.



Notary Public

My Commission Expires:



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

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[EXHIBIT A FOLLOWS IMMEDIATELY AFTER THIS PAGE]

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EXHIBIT A

5. THE LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AS FOLLOWS:

PARCEL 1:

LOTS 1, 2 AND 3 IN ORLAND TOWNE CENTER SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED JUNE 21, 1990 AS DOCUMENT NUMBER 90295427, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

NON-EXCLUSIVE PERPETUAL EASEMENTS FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 AS CREATED BY AGREEMENT DATED JUNE 1, 1990 AND RECORDED JUNE 21, 1990 AS DOCUMENT 90295432 ON, OVER AND ACROSS THE FOLLOWING DESCRIBED PROPERTY: THE EAST 40 FEET OF THE NORTH 343.37 FEET OF THE WEST 202 FEET OF LOT 1 IN THOMAS RESUBDIVISION BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 3:

NON-EXCLUSIVE, PERPETUAL EASEMENT FOR THE BENEFIT OF PARCEL 1 CREATED BY THE EASEMENT AGREEMENT DATED NOVEMBER 1, 1990 AND RECORDED DECEMBER 21, 1990 AS DOCUMENT NUMBER 90619832 MADE BY AND BETWEEN ORLAND HILLS I PARTNERSHIP, STEEL CITY NATIONAL BANK OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED JULY 5, 1984 AND KNOWN AS TRUST NUMBER 2731 AND WORTH BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 18, 1984 AND KNOWN AS TRUST NUMBER 3887 FOR THE PURPOSE OF INSTALLING, MAINTAINING, REPAIRING, REPLACING AND USING A 12 INCH WATER MAIN UNDER AND ACROSS THE NORTH 15 FEET OF THE FOLLOWING DESCRIBED LAND:

THE NORTHWEST QUARTER (EXCEPT THE EAST 20 ACRES AND THE SOUTH 10 FEET OF THE NORTH 63 FEET THEREOF AND EXCEPT THE EAST 434.60 FEET OF THE NORTH 300 FEET THEREOF) OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; AND THE WEST 144.60 FEET OF THE SOUTH 300 FEET OF THE NORTH 363 FEET OF THE EAST 435 FEET OF THE NORTHWEST 1/4 (EXCEPT EAST 20 ACRES) OF NORTHEAST 1/4 OF SECTION 22, TOWNSHIP 36 NORTH RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS

PARCEL 4:

NON-EXCLUSIVE, PERPETUAL EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR VEHICULAR INGRESS AND EGRESS AS CREATED BY THE COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL RIGHTS AGREEMENT DATED <8 13, 1992 AND RECORDED AUGUST 21, 1992 AS DOCUMENT NUMBER 92623488 ON, OVER AND ACROSS THE FOLOWING DESCRIBED PARCEL OF LAND: LOT 5 IN ORLAND TOWNE CENTER SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 5:

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NON-EXCLUSIVE, PERPETUAL EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR VEHICULAR INGRESS AND EGRESS AS CREATED BY THE COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL RIGHTS AGREEMENT DATED AUGUST 13, 1992 AND RECORDED AUGUST 21, 1992 AS DOCUMENT NUMBER 92623490 ON, OVER AND ACROSS THE FOLLOWING DESCRIBED PARCEL OF LAND: LOT 6 IN ORLAND TOWNE CENTER SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

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