

# UNOFFICIAL COPY

PREPARED BY: **97639896** Address: See Attached Exhibit A  
 STEPHEN H. MALATO, ESQ.  
 HINSHAW & CULBERTSON Tax No.: See Attached Exhibit A  
 222 North LaSalle St., Suite 300  
 Chicago, Illinois 60601

## ASSIGNMENT OF SUBLEASES AND RENTS

THIS ASSIGNMENT OF SUBLEASES AND RENTS is made this 30th day of June, 1997 by NORTHLAKE DEVELOPMENT COMPANY, an Illinois corporation ("Assignor"), in favor of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association ("Assignee").

## RECITALS

A. Assignor executed and delivered its note of even date herewith ("Note"), payable to the order of Assignee, in the principal amount of FOUR MILLION EIGHT HUNDRED THOUSAND AND 00/100 DOLLARS (\$4,800,000.00) ("Loan") and, as security therefor, executed and delivered to Assignee its leasehold mortgage, of even date with Note ("Mortgage"), conveying all of Assignor's right, title, and interest in, to and under the leasehold estate ("Leasehold Estate") demised by that certain Net Ground Lease Agreement dated \_\_\_\_\_, 1997 ("Lease Agreement") by and between the PETSMART, Inc., as landlord, ("Landlord") and Assignor, as tenant, pursuant to which certain premises, more particularly described in Lease Agreement, ("Leased Premises") were let to Assignor, a short form of which Lease Agreement was recorded in the office of the Recorder of Deeds of Cook County, Illinois, on \_\_\_\_\_, 1997 as Instrument No. 97639896, which Leased Premises are located on certain land legally described on Exhibit "A" attached hereto and made a part hereof ("Land") upon which will be constructed by Assignor ("Improvements"), together with all of Assignor's right, interest, options and privileges created in and by Lease Agreement (Lease Agreement, Leasehold Estate, Leased Premises, Improvements and all "Other Interests" (as such term is defined in Mortgages are collectively "Mortgaged Premises").

B. Assignor, as landlord, and PETSMART, Inc., ("PETSMART") as Tenant, executed a Sublease Agreement for Mortgaged Premises, ("Existing Sublease").

C. As additional security for the payment of Loan, interest and all other sums due and owing to Assignee pursuant to Note, Mortgage and "Other Loan Documents" (as such term is defined in Mortgage) (collectively "Indebtedness"), and the performance of all of the terms, covenants, conditions and agreements contained in Note, Mortgage and Other Loan Documents (collectively "Loan Papers"), Assignor agreed to assign to Assignee all of its right, title and interest in and to Existing Sublease, "Future Subleases", "Rents" and "Future Rents" (as such terms are hereafter defined).

19700422A and 19700422B  
 Cook Co, Ill.

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3750  
 3450  
 7150

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11/11/07

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\$34.00

DEPT-10 PENALTY

COOK COUNTY RECORDER

#2326 #VF \*-97-639896

1#6666 TRAN 2845 08/29/97 15:54:00

DEPT-01 RECORDING

\$37.50

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NOW, THEREFORE, in consideration of the disbursement of the proceeds of Loan by Assignee and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Assignor:

1. Hereby grants a security interest in and sells, assigns, transfers and sets over unto Assignee one hundred per cent (100%) of Assignor's right, title and interest in and to Existing Sublease and all rents, income or other sums payable by PETSMART, Inc. by the provisions thereof ("Rents") and all sublease agreements which may be executed by Assignor, as Landlord, with occupancy tenants of Mortgaged Premises ("Future Subtenants") at any time hereafter ("Future Subleases") and all rents, income or other sums payable by the provisions thereof ("Future Rents"), it being the intention of Assignor to make and establish an absolute transfer and assignment of Existing Sublease, Future Subleases, Rent and Future Rents. Assignor shall deliver copies of all Future Subleases to Assignee.

2. Agrees that this Assignment is absolute and effective immediately and is made for the purpose of securing the payment of Indebtedness and the performance and discharge of each and every obligation, covenant and agreement required of Assignor pursuant to Loan Papers.

3. Shall observe and perform all of the obligations imposed upon the landlord named in Existing Sublease and Future Subleases and shall:

- (a) not do or permit any act or occurrence which would impair the security thereof;
- (b) not collect any part of Rents or Future Rents more than one (1) month in advance of the time when the same shall become due;
- (c) not execute any other assignment of Assignor's interest, as landlord, in Existing Sublease, Future Subleases, Rents or Future Rents;
- (d) except for non-material modifications (such as confirmation of commencement dates) prepared in the ordinary course of business, not alter, modify or change the terms and conditions of Existing Sublease or Future Subleases, cancel or terminate the same or accept a surrender thereof, without the prior written consent of Assignee which consent shall not be unreasonably withheld;
- (e) at Assignee's request, execute and deliver all such further assurances and assignments as Assignee shall, reasonably from time to time, require.

4. Shall have the right, so long as no "Monetary Default", "Non-Monetary Default" (as such terms are defined in Mortgage) or default by Assignor, as landlord, pursuant to Existing

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Lease or Future Subleases which could result in the termination of an Existing Sublease, Future Sublease or materially interferes in the enforcement thereof ("Sublease Default") shall exist, to collect Rents or Future Rents, when due but not prior thereto, and to retain, use and enjoy the same. In the event of a Monetary Default, Non-Monetary Default or a Sublease Default, Assignor's right to retain, use and enjoy Rents and Future Rents shall automatically terminate and, after such events, Assignor shall hold all Rents and Future Rents in trust on behalf of Assignee and shall apply the same on account of Indebtedness or on account of the payment of the normal operating expenses of Mortgaged Premises required to be paid pursuant to Mortgage. Assignor shall be personally liable to Assignee for all Rents and Future Rents collected after a Monetary Default, Non-Monetary Default or Sublease Default which have not been applied on account of Indebtedness or on account of the payment of the normal operating expenses of Mortgaged Premises required to be paid pursuant to Mortgage.

5. Agree that any time following the occurrence of a Monetary Default, Non-Monetary Default or Sublease Default, Assignee may, at its option, either in person or through its agent or a receiver appointed by a court of competent jurisdiction, without notice, without, in any way, waiving such default, and without regard to the adequacy of the security for Indebtedness and with or without instituting any action or proceeding:

- (a) to the extent permitted by law, take possession of Mortgaged Premises and hold, manage, lease and operate the same on such terms and for such periods of time as Assignee may deem proper;
- (b) with or without taking possession of Mortgaged Premises, in its own name, institute suit or otherwise collect and receive Rents and Future Rents, including Rents and Future Rents past due and unpaid, with full power to make, from time to time, all alterations, renovations, repairs or replacements thereto or thereof, as Assignee may deem proper; and
- (c) apply Rents and Future Rents to the payment of: (i) all costs and expenses incurred in managing Mortgaged Premises (including, but not limited to, the salaries, fees and wages of the managing agent thereof and other employees of Assignor), (ii) all expenses of operating and maintaining Mortgaged Premises (including, but not limited to, all taxes, charges, claims, assessments, water rents, sewer rents and other liens and premiums for all insurance coverages which Assignee may deem necessary), (iii) all costs of alteration, renovation, repair or replacement of Mortgaged Premises, (iv) all expenses incident to the taking and retention of possession of Mortgaged Premises, and (v) Indebtedness and all costs, expenses and attorneys' fees incurred by Assignee by reason hereof, in such order of priority as Assignee, in its sole discretion, may determine, any statute, law, custom or use to the contrary notwithstanding.

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6. Agrees that Assignee shall not be:

- (a) liable for any loss sustained by Assignor resulting from Assignee's failure to let Mortgaged Premises following the occurrence of a Monetary Default, Non-Monetary Default or Sublease Default or by reason of any other act or omission of Assignee in managing Mortgaged Premises thereafter, unless such loss is caused by the unreasonable delay willful misconduct or gross negligence of Assignee;
- (b) obligated to perform or discharge, nor does Assignee hereby undertake to perform or discharge, any obligation, duty or liability of Assignor pursuant hereto or pursuant to Existing Sublease or Future Subleases and Assignor shall, and does hereby agree, to indemnify Assignee for, and hold Assignee harmless from, any and all liability, loss or damage which may or might be incurred by reason thereof and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants, conditions and agreements required of Assignor pursuant hereto or pursuant to Existing Sublease or Future Subleases, PROVIDED THAT such indemnification shall not include any liability, loss or damage which may be incurred by Assignee by reason of the unreasonable delay, willful misconduct or gross negligence of Assignee or its acts and deeds following the exercise of Assignee's rights pursuant hereto or pursuant to Existing Sublease and Future Subleases.

If Assignee incurs any liability pursuant hereto or pursuant to Existing Sublease or Future Subleases or in defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees (exclusive of any costs, expenses and attorneys' fees incurred by Assignee by reason of its unreasonable delay, negligence, willful misconduct or acts and deeds following the exercise of Assignee's rights pursuant hereto or pursuant to Existing Sublease or Future Subleases), shall be secured by Mortgage and Assignor shall reimburse Assignee therefor, immediately upon demand, PROVIDED THAT no personal liability shall be imposed upon Assignor. In the event of the failure of Assignor so to do, Assignee may, at its option, declare Indebtedness immediately due and payable.

7. Agrees that, except as otherwise herein provided, this Assignment shall not operate to place upon Assignee any responsibility for the control, care, management or repair of Mortgaged Premises or for the performance of any of the terms, covenants, conditions and agreements required of Assignor, as landlord, pursuant to Existing Sublease or Future Subleases nor is the same intended to make Assignee responsible or liable for any:

- (a) waste committed on Mortgaged Premises by Future Subtenants or any other party;

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- (b) dangerous or defective condition of Mortgaged Premises; or
- (c) negligence in the management, upkeep, repair or control of Mortgaged Premises resulting in loss, injury or death to PETSMART or any Future Subtenant, licensee, employee or stranger;

unless caused by the willful misconduct or gross negligence of the Assignee.

8. Agrees that:

- (a) Any good faith affidavit, certificate, letter or statement of any officer, agent or attorney of Assignee, setting forth that any part of Indebtedness remains unpaid, shall be and constitute evidence of the validity, effectiveness and continuing force and effect of this Assignment (all persons being hereby authorized to rely thereon); and Assignor hereby authorizes and directs Future Subtenants or other occupants of Mortgaged Premises, upon receipt from Assignee of written notice to the effect that Assignee is then the holder of Loan Papers and that a Monetary Default, Non-Monetary Default or Sublease Default has occurred pursuant thereunder or pursuant hereto, to pay Rents and Future Rents to Assignee until otherwise notified by Assignee to the contrary.
- (b) Upon payment of Indebtedness in full, this Assignment shall be null and void.

9. Agrees that Assignee may take or release any other security given for the payment of Indebtedness, release any party primarily or secondarily liable therefor and apply any other security, in its possession, to the satisfaction of Indebtedness, without prejudice to any of its rights pursuant hereto.

10. Agrees that the terms "Existing Sublease" and "Future Subleases" shall include any subleases thereof and all extensions or renewals of Existing Sublease and Future Subleases and subleases thereof.

11. Agrees that nothing contained herein and no act done or omitted to be done by Assignee pursuant to the powers and rights granted to it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies pursuant to Loan Papers and this Assignment is made without prejudice to any of the rights and remedies possessed by Assignee thereunder. The right of Assignee to collect Indebtedness and to enforce any security therefor in its possession may be exercised by Assignee either prior to, concurrently with or subsequent to any action taken by it pursuant hereto. Nothing contained in this Assignment shall be deemed to permit Assignor to enter into any sublease or other agreement concerning the Mortgaged Premises except to the extent specifically allowed by the Lease Agreement and the Loan Papers.

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12. Agrees that any notices to be served pursuant hereto shall be deemed properly delivered if delivered in compliance with the relevant provisions of the Loan Agreement between Assignor and Assignee of even date herewith.

13. Agrees that this Assignment and all covenants and warranties herein contained shall inure to the benefit of Assignee, its successors, assigns, grantees and legal representatives and shall be binding upon Assignor, their respective heirs, executors, administrators, successors, assigns, grantees and legal representatives.

Nothing contained herein or in Note, Mortgage and Other Loan Documents to the contrary notwithstanding shall be deemed to release, affect or impair Indebtedness or the rights of Assignee to enforce its remedies pursuant hereto and to Note, Mortgage and Other Loan Documents, including, without limitation, the right to pursue any remedy for injunctive or other equitable relief.

IN WITNESS WHEREOF, Assignor has caused this Assignment of Subleases and Rents to be signed by its general partner on the day and year first above written.

NORTHLAKE DEVELOPMENT CORPORATION, an Illinois corporation

By: \_\_\_\_\_

Title: *Vice President*

ATTEST:

\_\_\_\_\_  
Title: *Secretary*

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STATE OF ILLINOIS     )  
                                  ) SS.  
COUNTY OF COOK     )

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that NORTHLAKE DEVELOPMENT COMPANY, an Illinois corporation ("Assignor"), acting by and through John C Martin, the Vice President of (the "Corporation"), personally known to me to be the same person whose name is subscribed to the foregoing instrument as such John C Martin appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act, as the free and voluntary act of the Company and as the free and voluntary act of Assignor, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 30th day of June, 1997.

Eileen C Lewis  
Notary Public

My Commission Expires: 1/2/99



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STATE OF ILLINOIS     )  
                                  )     SS.  
COUNTY OF COOK     )

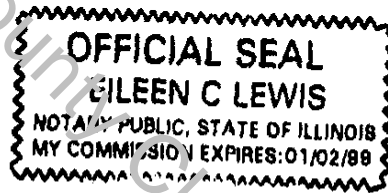
The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Jean C. Martin, the Vice President of Northlake Development Company, an Illinois Corporation ("Corporation") and Jerry Thibbs Secretary of said Bank who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Corporation the uses and purposes therein set forth.

97 GIVEN UNDER MY HAND AND NOTARIAL SEAL this 30<sup>th</sup> day of June, 1992.

Gileen C Lewis  
Notary Public

My Commission Expires:

1/21/99



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**EXHIBIT A**

**LEGAL DESCRIPTION OF PARCEL**

**Parcel 1:**

That part of Lot 1 lying North of a line drawn 10 feet South of and parallel with the South face of the brick wall of a one story brick building said line being 220.18 feet South of the North line of said Lot 1, as measured on the West line thereof drawn to a point 220 feet South of said North line of said Lot 1, extended to the East line of said Lot 1 in Owner's Division of that part of the East 400 feet of the West 1/2 of the Northeast 1/4 of Section 31, Township 40 North, Range 13, East of the Third Principal Meridian, lying Northerly of the Northerly line of the right of way of The Chicago, Milwaukee and St. Paul Railroad and Southerly of the Center line of Grand Avenue excepting therefrom that part of the East 50 feet thereof deeded to The Chicago Suburban Railroad, in Cook County, Illinois.

**Parcel 2:**

Lot 1 in Robert Volk's Subdivision of the East 1/2 of Lot 1 and Lots 2 and 10 in Rutherford's Oak Park Avenue and Fullerton Avenue Subdivision of part of the Northwest 1/4 of the Northeast 1/4 of Section 31, Township 40 North, Range 13 East of the third principal meridian according to the plat thereon recorded November 9, 1927 as Document Number 9836413 in Cook County, Illinois

**Parcel 3:**

Perpetual easement appurtenant to and for the use and benefit of Parcel 1 as created by Agreement dated November 30, 1944 and recorded December 8, 1944 as Document 13411811 and also created by easement grant in Warranty Deed made by Davies Supply Company to Chicago Metals Company Sheet and Strip Steel Division, dated August 28, 1946 and recorded August 29, 1946 as Document 13880789, over the North 20 feet of the East 262 feet lying South of and adjoining the South 10 feet of the East 262 feet of Parcel 1 for purposes of ingress and egress therefrom, in Cook County, Illinois.

PIN

13-31-204-001-

13-31-205-032

6601-6647 W. Grand

2371-2379 N. Kennedy

Chicago, Illinois

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