

**SUBORDINATION NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS AGREEMENT, dated this ^{29th day of April} ~~25 day of February~~, 2005, by and between **MERRILL LYNCH MORTGAGE LENDING, INC.**, a Delaware corporation, whose address is 250 Vesey Street, 16th Floor, New York, New York 10080 ("Lender"), **THIRD CREEK, LLC, MATTHIAS D. RENNER FAMILY, LLC, KENNETH J. WEBER FAMILY, LLC**, each a Missouri limited liability company, whose address is c/o National Real Estate Management Corporation, 1830 Craig Park Court, #101, St. Louis, Missouri 63146-4146 ("Landlord"), and **PETSMART, INC.**, a Delaware corporation, whose address is 19601 N. 27th Avenue, Phoenix, Arizona 85027, Attention: Vice President of Real Estate and Construction ("Tenant").

WITNESSETH:

- A. WHEREAS, Landlord and Tenant have entered into a Shopping Center Lease Agreement dated July 28, 2003, as amended by that certain First Amendment to Shopping Center Lease dated January 30, 2004, and as amended by that certain Second Amendment to Shopping Center Lease dated June 17, 2004 (collectively, the "Lease") pertaining to certain premises (the "Premises") at Inverness Heights Market (the "Shopping Center"); and
- B. WHEREAS, Lender has made or agreed to make a loan in the amount of Eighteen Million, Two Hundred Thousand Dollars and Zero Cents (\$~~18,200,000.00~~) 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 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
- 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

Cahaba Title, Inc.

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. ATTORNMENT. 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

(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.

6. NOTICE OF LANDLORD DEFAULT. Each of the Lender and Tenant shall give to the other, by certified or registered mail, a copy of any notice of default served upon Landlord under the Mortgage or the Lease, respectively, at the address set forth above, and the other 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 Mortgage or the Lease, respectively.

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. NOTICE OF RELEASE. Lender shall within thirty (30) days after release, expiration or other termination of the Mortgage provide PETsMART with written notice thereof.

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:

MERRILL LYNCH MORTGAGE LENDING, INC.,
a Delaware corporation

By: George H. Kok
Name: Senior Vice President
Title: _____

LANDLORD:

THIRD CREEK, L.L.C.,
a Missouri limited liability company

By: _____
Name: Matthias D. Renner
Title: Title Manager

MATTHIAS D. RENNER FAMILY L.L.C.,
a Missouri limited liability company

By: _____
Name: Matthias D. Renner
Title: Title Manager

KENNETH J. WEBER FAMILY L.L.C.,
a Missouri limited liability company

By: _____
Name: Matthias D. Renner
Title: Title Manager

TENANT:

PETsMART, INC.,
a Delaware corporation

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

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.

20050512000228710 5/7 \$29.00
Shelby Cnty Judge of Probate, AL
05/12/2005 10:01:41AM FILED/CERT

On this 3 day of May, 2005, before me, the undersigned officer, personally appeared George H. KOK, who acknowledged himself to be the Senior Vice President of **MERRILL LYNCH MORTGAGE LENDING, INC.**, a Delaware corporation, and that he, 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.

Valencia Love
Notary Public

My Commission Expires:

VALENCIA LOVE
NOTARY PUBLIC, STATE OF NEW YORK
No. 01108110507
QUALIFIED IN KINGS COUNTY
MY COMMISSION EXPIRES MAY 24, 2008

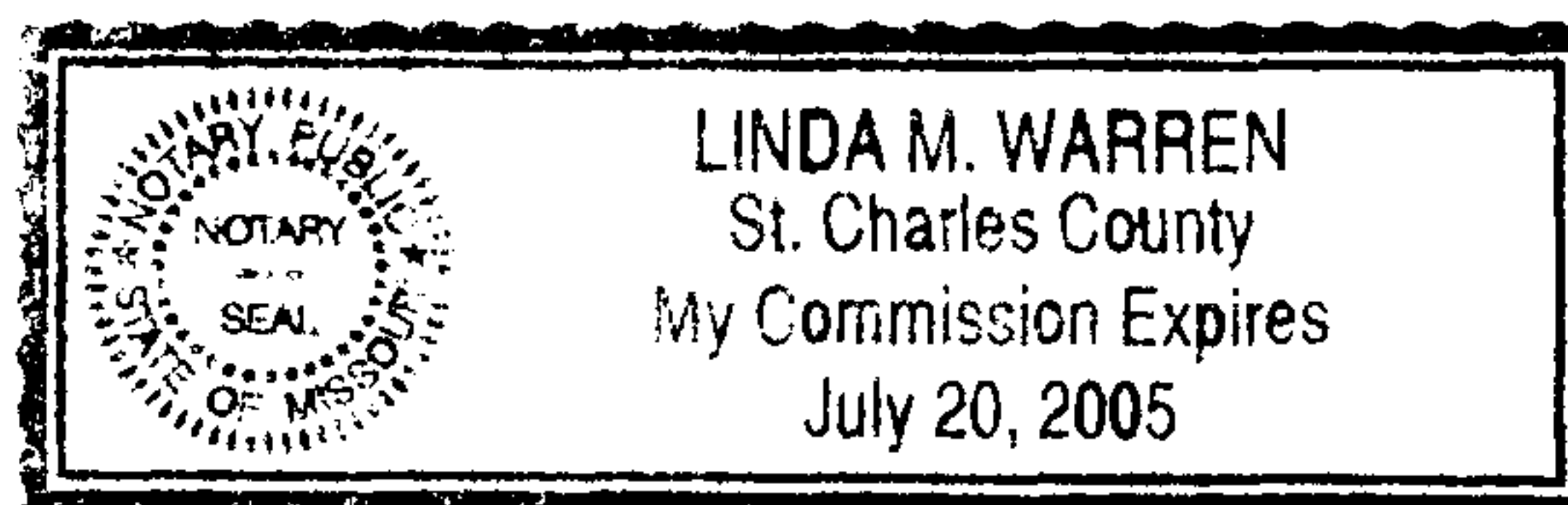
STATE OF Missouri)
COUNTY OF St. Louis) SS.

On this 13th day of APRIL, 2005, before me, the undersigned officer, personally appeared Matthias D. Renner, who acknowledged himself to be the Manager of all three (3) of the following entities: **THIRD CREEK, L.L.C., MATTHIAS D. RENNER FAMILY, L.L.C., and KENNETH J. WEBER FAMILY, L.L.C.**, all being Missouri limited liability companies, and that he, as such Manager, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability companies by himself as Manager.

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

Linda M. Warren
Notary Public

My Commission Expires:



STATE OF ARIZONA)
COUNTY OF MARICOPA) SS:

On this 25 day of February, 2005, before me, the undersigned officer, personally appeared D. Christopher Ward, who acknowledged herself 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

EXHIBIT "A"

LEGAL DESCRIPTION OF LAND

A parcel of land situated in the Northeast one-quarter of the Southeast one-quarter of Section 36, Township 18 South, Range 2 West and the Northwest one-quarter of the Southwest one-quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Begin at the Northwest corner of the Northwest one-quarter of the Southwest one-quarter of Section 31, Township 18 South, Range 1 West and run in a Southerly direction along the west line for a distance of 165.34 feet; thence turn an exterior angle of 90 degrees 17 minutes 26 seconds to the right and run in an Easterly direction for a distance of 419.70 feet; thence turn an interior angle of 75 degrees 55 minutes 04 seconds to the left and run in a Southwesterly direction for a distance of 483.03 feet; thence turn an exterior angle of 165 degrees 36 minutes 34 seconds to the right and run in a Southerly direction for a distance of 152.38 feet; thence turn an interior angle of 90 degrees 00 minutes 00 seconds to the left and run in a Westerly direction for a distance 251.13 feet; thence turn an exterior angle of 103 degrees 37 minutes 16 seconds to the right and run in a Southwesterly direction for a distance of 138.35 feet; thence turn an exterior angle of 194 degrees 10 minutes 07 seconds to the right and run in a Southwesterly direction for a distance of 266.47 feet to a point on a curve to the right, said curve having a radius of 3124.05 feet, a central angle of 00 degrees 44 minutes 02 seconds, an interior angle of 88 degrees 33 minutes 51 seconds to the left to chord for a chord distance of 40.01 feet; thence run along arc of said curve for a distance of 40.01 feet; thence turn an interior angle of 91 degrees 26 minutes 09 seconds to the left from chord and run in a Northeasterly direction for a distance of 189.66 feet; thence turn an exterior angle of 135 degrees 00 minutes 00 seconds to the right and run in a Northwesterly direction for a distance of 46.45 feet; thence turn a exterior angle of 135 degrees 00 minutes 00 seconds to the right and run in a Northwesterly direction for a distance of 673.90 feet; thence turn an interior angle of 180 degrees 41 minutes 41 seconds to the left and run in a Northwesterly direction for a distance of 19.70 feet to a point on the Easternmost right of way line of Cahaba Beach Road; thence turn an interior angle of 89 degrees 49 minutes 43 seconds to the left and run in a Northeasterly direction along said right of way for a distance of 42.66 feet to the point of commencement of a non-tangent curve to the right, said curve having a radius of 1220.03 feet, a central angle of 12 degrees 22 minutes 05 seconds, an interior angle of 173 degrees 53 minutes 33 seconds to the left to chord for a chord distance of 262.85 feet; thence run along arc of said curve and along said right of way for a distance of 263.36 feet; thence turn an interior angle of 173 degrees 43 minutes 12 seconds to the left from chord and run in a Northeasterly direction along said right of way for a distance of 289.69 feet to the point of commencement of a non-tangent curve to the left, said curve having a radius of 915.84 feet, a central angle of 10 degrees 04 minutes 28 seconds, an exterior angle of 174 degrees 57 minutes 52 seconds to the right to chord for a chord distance of 160.83 feet; thence run along arc of said curve and along said right of way for a distance of 161.03 feet to a point on the North line of the Northeast one-quarter of the Southeast one-quarter of Section 36, Township 18 South, Range 2 West; thence leaving said right of way, turn an interior angle of 122 degrees 20 minutes 33 seconds to the left from chord and run in an Easterly direction along the North line for 242.13 feet to the POINT OF BEGINNING. Said parcel contains 638,712 square feet or 14.66 acres more or less.