

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is entered into as of this 1 day of May, 2015 by and between **WELLS FARGO BANK, N.A.**, a national association, whose address is Wells Fargo Bank, National Association, 1 North Jefferson, Building D3, St. Louis, Missouri 63103, Attention: Jeff Rombach, Loan No. 1013567, AU#11922 ("Lender"), **INVERNESS HEIGHTS SHOPPING CENTER, LP**, an Alabama limited partnership, whose address is 9986 Manchester Road, Suite 200, St. Louis, Missouri 63122, ("Landlord"), and **PETSMART, INC.**, a Delaware corporation, whose address is 19601 N. 27th Avenue, Phoenix, Arizona 85027, Attention: Vice President and Deputy General Counsel ("Tenant").

**WITNESSETH:**

WHEREAS, Landlord's predecessor-in-interest, KIMCO Birmingham, L.P., an Alabama limited partnership, and Tenant entered into that certain Shopping Center Lease dated July 28, 2003, as amended and supplemented from time to time (collectively, the "Lease"), pertaining to certain premises (the "Premises") at Inverness Heights Shopping Center (the "Shopping Center") in Birmingham, Alabama;

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

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.

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 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. 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 which Tenant might have against any prior landlord (including 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



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(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 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. 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

(SIGNATURE PAGES FOLLOW)

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

LENDER:

**WELLS FARGO BANK, N.A.,**  
a national association

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

Name: Jeff Rombach

Title: Vice President

STATE OF MISSOURI )  
 ) ss.  
County of St. Louis )

On April 29, 2015, before me, the undersigned officer, personally appeared Jeff Rombach, Vice President, of **WELLS FARGO BANK, N.A.**, a national association:

X whom I know personally;  
\_\_\_\_\_ whose identity was proven to me on the oath of \_\_\_\_\_  
\_\_\_\_\_, a credible witness by me duly sworn;  
\_\_\_\_\_ whose identity I verified on the basis of he/she \_\_\_\_\_  
\_\_\_\_\_

and acknowledged that he/she, being authorized so to do, executed the foregoing instrument in such capacity on behalf of the corporation for the purposes therein contained.

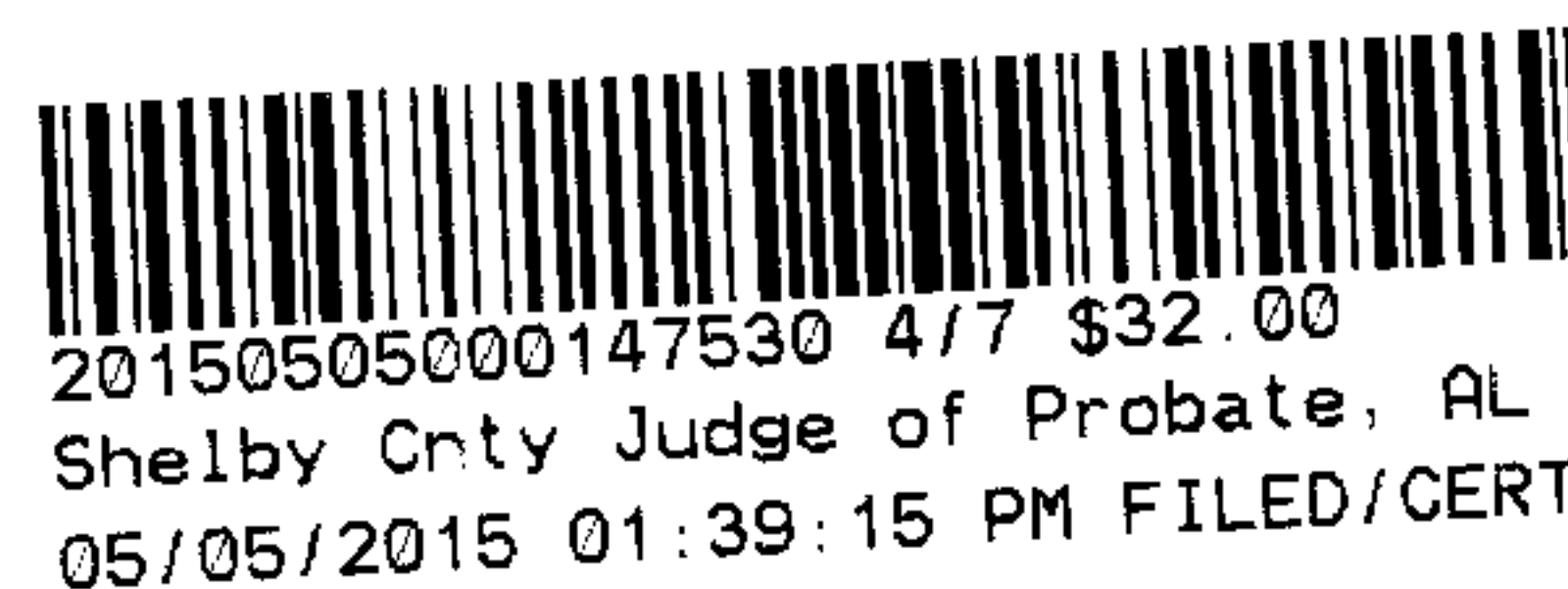
In Witness Whereof, I hereunto set my hand and official seal.

NOTARY SEAL:

\_\_\_\_\_  
Notary Public



TERRENCE F. MOFFITT  
My Commission Expires  
August 4, 2017  
St. Louis County  
Commission #13505614





LANDLORD:

**INVERNESS HEIGHTS SHOPPING CENTER,  
LP**, an Alabama limited partnership,

By: IH MGMT, LLC.  
its General Partner

Name: Thomas R. Green

Title: President

STATE OF Missouri )  
 ) ss.  
County of St. Louis )

On April 18, 2015, before me, the undersigned officer, personally appeared Thomas R. Green President, of **INVERNESS HEIGHTS SHOPPING CENTER, LP**, an Alabama limited partnership:

☒ whom I know personally;  
☐ whose identity was proven to me on the oath of \_\_\_\_\_,  
\_\_\_\_\_, a credible witness by me duly sworn;  
☐ whose identity I verified on the basis of he/she \_\_\_\_\_,  
\_\_\_\_\_.


and acknowledged that he/she, being authorized so to do, executed the foregoing instrument in such capacity on behalf of the corporation for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

NOTARY SEAL:

Teresa A. Ulmer  
Notary Public

**TERESA A. ULMER**  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Charles County  
My Commission Expires: 8-24-2017  
Commission #13469943

  
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TENANT:

**PETSMART, INC.,**  
a Delaware corporation

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

Name: Robert Mullins

Title: Senior Counsel

STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa       )

On April 16, 2015, before me, the undersigned officer, personally appeared Robert Mullins, Senior Counsel, of **PETSMART, INC.**, a Delaware corporation:

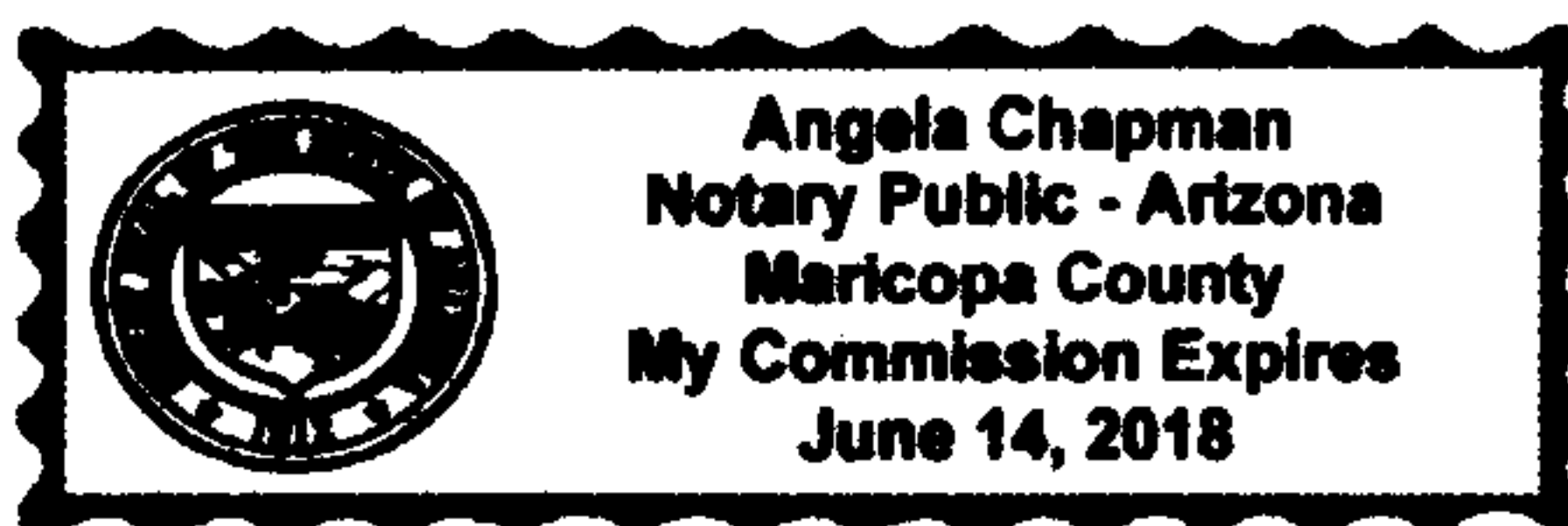
X whom I know personally;  
\_\_\_\_\_ whose identity was proven to me on the oath of \_\_\_\_\_  
\_\_\_\_\_ a credible witness by me duly sworn;  
\_\_\_\_\_ whose identity I verified on the basis of he/she \_\_\_\_\_  
\_\_\_\_\_

and acknowledged that he/she, being authorized so to do, executed the foregoing instrument in such capacity on behalf of the corporation for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

NOTARY SEAL:

Angela Chapman  
Notary Public



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## EXHIBIT A

### LEGAL DESCRIPTION

All that certain real property located in the County of Shelby, State of Alabama, described as follows:

Lots 1, 2, 3, according to the Survey of Cypress Equities to Hoover, as recorded in Map Book 31, page 79, in the office of the Judge of Probate of Shelby County, Alabama, being situated in Shelby County, Alabama.

APN: 58-03-9-31-0-001-048.003  
58-02-7-36-0-001-020.001  
58-02-7-36-0-001-020.003  
58-03-9-31-0-001-048.004



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