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PREPARED BY: \_\_\_\_\_

RETURN TO: \_\_\_\_\_

M-14596

LAND TITLE OF SKAGIT COUNTY

**SUBORDINATION NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

**THIS AGREEMENT**, dated the 3<sup>rd</sup> day of MAY, 2004, by and between **WACHOVIA BANK, NATIONAL ASSOCIATION**, a national banking association, whose address is PA 1245, 123 South Broad Street, Philadelphia, Pennsylvania 19109, Attention: Kimberly I. Ludtke, Vice President ("Lender"), **NEWMAN DEVELOPMENT GROUP OF BURLINGTON, LLC**, a Washington limited liability company, whose address is 2225 Van Ness, Suite 102, San Francisco, California 94109 ("Landlord"), and **PETsMART, INC.**, a Delaware corporation, whose address is 19601 N. 27th Avenue, Phoenix, Arizona 85027, Attention: Vice President of Real Estate ("Tenant"),

**WITNESSETH:**

- A. WHEREAS, Landlord and Tenant have entered into a Shopping Center Lease dated MAY 3, 2004 ("Lease"), a memorandum of which is recorded under Auditor's File No 200406020074 Skagit County, Washington, pertaining to certain premises (the "Premises") at the SEC I-5 & George Hopper Road, Burlington, Washington 98233 (the "Shopping Center"); and
- B. WHEREAS, Lender has made or agreed to make a loan in the amount of Twenty-five Million Seven Hundred Sixty-four Thousand Eighty-eight and no/100 Dollars (\$25,764,088.00) 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 Security Instrument; 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 Security Instrument and to all renewals, modifications, consolidations, replacements and extensions of the Security Instrument, 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 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 Security Instrument 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 Security Instrument 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 Security Instrument, 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 shall comply with such notice in accordance with



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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 Security Instrument 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 Security Instrument 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 had a reasonable period of time after such notice in which to



(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.

**IN WITNESS WHEREOF**, the parties hereto have executed these presents the day and year first above written.

*[signatures and acknowledgments on following pages]*

  
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TENANT:

**PETsMART, Inc.,**  
**a Delaware corporation**

By: [Signature]  
Name: Steven E. Jackson  
Title: Vice President, Real Estate

\*\*\*\*\*

STATE OF ARIZONA )  
COUNTY OF MARICOPA ) ss:

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of April, 2004, by Steven E. Jackson as Vice President, Real Estate of **PETsMART, Inc.**, a Delaware corporation, on behalf of the Tenant.

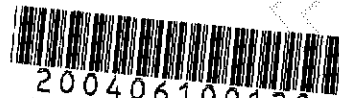
[Signature]  
Notary Public

My Commission expires:

\_\_\_\_\_



**HEMALI PATEL**  
Notary Public - Arizona  
Maricopa County  
Expires 08/31/06



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LANDLORD:

**NEWMAN DEVELOPMENT GROUP OF  
BURLINGTON, LLC, A Washington limited  
liability company**

By: George Axel  
Name: George Axel  
Its: MEMBER

\*\*\*\*\*

STATE OF California )  
COUNTY OF San Francisco ) ss:

On this 6th day of May, 2004, before me, the undersigned officer, personally appeared George Axel, who acknowledged himself to be the Member of **Newman Development Group of Burlington, LLC**, a Washington limited liability company, and that he, as such Member being authorized so to do, executed the foregoing instrument on behalf of the corporation, as general partner of Landlord, for the purposes therein contained.

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

My commission expires:

Karin Marie Lomax  
Notary Public

[Notarial Stamp/Seal]



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LENDER:

WACHOVIA BANK, NATIONAL ASSOCIATION,  
a national banking association

By: Kimberly A. Ludtke  
Kimberly A. LUDTKE  
Title: VICE PRESIDENT

\*\*\*\*\*

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF PHILADELPHIA

STATE OF NORTH CAROLINA )

COUNTY OF \_\_\_\_\_ )

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF PHILADELPHIA

I, Mary Lou Lopresti, a Notary Public of \_\_\_\_\_  
County, North Carolina, certify that Kimberly A. Ludtke  
personally appeared before me this day and acknowledged that he/she is  
Vice President of WACHOVIA BANK, NATIONAL ASSOCIATION, a national  
banking association, and that he/she, as Vice President, being authorized to do so,  
executed the foregoing instrument on behalf of the association.

Witness my hand and notarial stamp or seal, this 12<sup>th</sup> day of May, 2004.

My commission expires:

Mary Lou Lopresti  
Notary Public

[Official Seal]

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Mary Lou Lopresti, Notary Public  
City of Philadelphia, Philadelphia County  
My Commission Expires Jan. 29, 2008  
Member, Pennsylvania Association of Notaries



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## **Exhibit "A"**

### **Legal Description**

Lots 2 – 11, inclusive, and Lot 15, City of Burlington Binding Site Plan No. Burl-01-04, entitled Newman Development of Burlington, LLC, Retail/Commercial Center, approved March 8, 2004 and recorded March 15, 2004 under Skagit County Auditor's File No. 200403150156, and being a portion of Government Lot 8 and the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$ , Section 7, Township 34 North, Range 4 East, W.M.



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