



201603140141

Skagit County Auditor

\$133.00

3/14/2016 Page

1 of 11 2:46PM

Document Title:

Subordination Agreement

Reference Number:

1106054-9

Grantor(s):☐ additional grantor names on page ____

1. Petromart

2.

Grantee(s):☐ additional grantee names on page ____

1. German American Capital Corp

2.

Abbreviated legal description:☐ full legal on page(s) ____

Lots 2-9, inclusive, and Lot 13 & 14 City of Burlington BOP-01-04

Assessor Parcel / Tax ID Number:☐ additional tax parcel number(s) on page ____

P121437

I, Dawn Olson, am hereby requesting an emergency non-standard recording for an additional fee provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document. Recording fee is \$73.00 for the first page, \$1.00 per page thereafter per document. In addition to the standard fee, an emergency recording fee of \$50.00 is assessed. This statement is to become part of the recorded document.

Signed

Dawn Olson

Dated

3/14/2016

AFTER RECORDING MAIL TO:

Name Frost Brown Todd LLC - any Dreisbach
Address 400 West Market St. 32nd Floor
City/State Louisville, KY 40202-3363

Document Title(s):

1. Subordination, Non-Disturbance and Attornment Agreement

Reference Number(s) of Documents Assigned or released:

Grantor(s):

1. Petsmart, Inc.
- 2.

GUARDIAN NORTHWEST TITLE CO

110654-9

[] Additional information on page of document

Grantee(s):

1. German American Capital Corporation
- 2.

[] Additional information on page of document

Abbreviated Legal Description:

LOTS 2 - 9, INCLUSIVE, AND LOTS 13 AND 14 CITY OF BURLINGTON BSP NO. BURL-01-04

Tax Parcel Number(s):

P121437, P121438, P121439, P121440, P121441, P121442, P121443, P121444, P121448 and P121449

[X] Complete legal description is listed under Exhibit "A"

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

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is entered into as of this 11th day of March, 2016 among **GERMAN AMERICAN CAPITAL CORPORATION**, a Maryland corporation, whose address is 60 Wall Street, 10th Floor, New York, New York 10005 ("Lender"), **SHI OWNER, LLC**, a Delaware limited liability company (as successor in interest to Stratford Hall, Inc., a New York corporation), whose address is 4310 San Vicente Boulevard, Suite 250, Los Angeles, California 90048 ("Landlord"), and **PETSMART, INC.**, a Delaware corporation, whose address is 19601 North 27th Avenue, Phoenix, Arizona 85027, Attention: Senior Vice President and General Counsel ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant are parties to that certain ^{*}Shopping Center Lease Agreement dated May 3, 2004, as amended and supplemented from time to time (collectively, the "Lease"), pertaining to certain premises (the "Premises") at Burlington Crossings Shopping Center (the "Shopping Center") in Burlington, Washington; **unrecorded*

^{**}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 ***which is recording concurrently herewith*

WHEREAS, Tenant and Lender wish to enter into this Agreement to define their obligations to one another under the terms of the Lease and the Mortgage.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, 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, and notwithstanding anything in the Mortgage or other loan documents, 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 Tenant is not in default under the Lease beyond any applicable 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. Any foreclosure, sale or other disposition of the Premises by or on behalf of Lender, whether in a judicial action or proceeding, trustee's sale or otherwise, shall be made subject to all rights of Tenant under the Lease.

3. **ATTORNMEN**T. If 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, upon written notice to it, 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. Subject to each party's compliance with the terms of this Agreement, Tenant hereby waives the provisions of any statute or rule of law now or hereafter in effect that might give it any right or election to terminate the Lease by reason of any such foreclosure action or proceeding.

4. **PERFORMANCE BY TENANT**. If Tenant receives any notice from Lender to pay rent or other sums or to render any other performance under the Lease to such Lender, Tenant may render performance in accordance with such notice without any duty of inquiry and despite any apparent information 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 in accordance with this Agreement or Lender's notice or instructions. Notwithstanding the foregoing, Tenant shall have no obligation to pay to Lender rent or other sums or to render any other performance under the Lease to such Lender upon receipt of any writ, order or injunction of any court, or the automatic stay of proceedings imposed under federal bankruptcy law in any bankruptcy proceeding in which Landlord is the debtor.

5. **LENDER LIABILITY**. Upon transfer of the Premises to the Lender, Lender shall have the same rights and obligations under the Lease as Landlord, and Tenant shall have the same rights and remedies under the Lease against Lender as existed against Landlord, including for a breach of the Lease; provided, however, that Lender shall not be:

(a) subject to any offsets that Tenant might have against any prior landlord (including Landlord), except for: (i) offsets arising under the Lease with respect to costs and expenses (but not damages) incurred by Tenant after Tenant has notified Lender at the address above and given Lender an opportunity to cure as provided in this Agreement, or (ii) offsets arising from (y) a reconciliation or year-end adjustment of an estimated rental or other charge under the Lease, or (z) an audit of Landlord's business records, as provided in the Lease;

(b) bound by any Base Rent (as defined in the Lease) that Tenant paid for more than 1 month in advance;

(c) obligated to reimburse Tenant for any security deposit, unless said security deposit is received by Lender; or

(d) bound by any amendment or modification of the material terms of the Lease (including modifications to rent, term or Premises size or location) 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 30 days from the date of Tenant's or Landlord's notice to Lender.

Provided however, that nothing herein shall excuse Lender 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 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 or by overnight courier with a nationally recognized courier service, a copy of any notice of default served by Tenant upon Landlord under the Lease, at Lender's 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.** If Tenant notifies Lender that Tenant intends to terminate the Lease because 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 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, through the exercise of commercially reasonable efforts, to complete such cure within the Initial Cure Period, Lender shall be entitled to such additional time as may be reasonably necessary to cure such default, 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. **ASSIGNS.** The terms "Lender", "Landlord" and "Tenant" include such parties and their assigns.

10. **CONDITION.** The parties agree that this Agreement shall be valid and binding upon any party only after fully executed, acknowledged and delivered by all of the parties hereto.

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

LENDER:

GERMAN AMERICAN CAPITAL
CORPORATION, a Maryland corporation

By: [Signature]
Name: Jon Tilli
Title: Vice President

STATE OF New York)
County of New York) ss.

By: [Signature]
Name: MURRAY MACKINNON
Title: VICE PRESIDENT

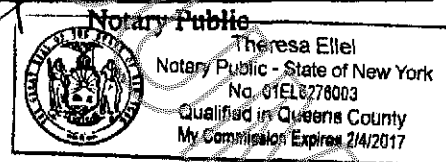
On March 9, 2016, before me, the undersigned officer, personally appeared Jon Tilli + Murray Mackinnon Vice Presidents of GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation:

☒ 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 his/her _____

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:



[LANDLORD AND TENANT SIGNATURES AND ACKNOWLEDGEMENTS
CONTINUE ON THE FOLLOWING PAGES]

LANDLORD:

SHI OWNER, LLC, a Delaware limited liability company

By:

Name:

Title:

[Signature]

FRANK LEE

VP

STATE OF _____

) ss.

County of _____

On _____, 2016, before me, the undersigned officer, personally appeared _____, of SHI OWNER, LLC, a Delaware limited liability company;

_____ whom I know personally;

_____ whose identity was proven to me on the oath of _____

_____, a credible witness by me duly sworn; or

_____ whose identity I verified on the basis of his/her _____

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

notary acknowledgement

[TENANT SIGNATURE AND ACKNOWLEDGEMENT CONTINUES ON THE FOLLOWING PAGE]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

On March 10, 2016 before me, Julia Sima Levine, Notary Public, personally appeared Frank Lee, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Julia Sima Levine

(Seal)



TENANT:

PETSMART, INC., a Delaware corporation

By: [Signature]
Name: Byron Ayle
Title: Director of Real Estate Administration

STATE OF ARIZONA)
) ss.
County of Maricopa)

On March 7, 2016, before me, the undersigned officer, personally appeared Byron Ayle, Director of Real Estate Administration, of **PETSMART, INC.**, a Delaware corporation:

- ☒ whom I know personally;
- ☐ whose identity was proven to me on the oath of _____,
- ☐ _____, a credible witness by me duly sworn; or
- ☐ whose identity I verified on the basis of his _____.

and acknowledged that he, 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:

[Signature]
Notary Public



TERESA G. HALL
Notary Public - Arizona
Maricopa County
Expires 01/09/2017

EXHIBIT A

LEGAL DESCRIPTION

(to be attached)

Legal Description

Real property in the City of Burlington, County of Skagit, State of Washington, described as follows:

THE LAND REFERRED TO IN THIS REPORT/POLICY IS SITUATED IN THE STATE OF WASHINGTON, COUNTY OF SKAGIT, AND IS DESCRIBED AS FOLLOWS:

LOTS 2 – 9, INCLUSIVE, AND LOTS 13 AND 14, INCLUSIVE, CITY OF BURLINGTON BINDING SITE PLAN NO. BURL-01-04, ENTITLED NEWMAN DEVELOPMENT OF BURLINGTON, LLC, RETAIL/COMMERCIAL CENTER, APPROVED JUNE 12, 2006 AND RECORDED JUNE 27, 2006, UNDER SKAGIT COUNTY AUDITOR'S FILE NO. 200606270207, BEING A REVISION OF THAT CERTAIN INSTRUMENT APPROVED MARCH 8, 2004 AND RECORDED MARCH 15, 2004, UNDER AUDITOR'S FILE NO. 200403150156, AND BEING A PORTION OF GOVERNMENT LOT 8 AND THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4, SECTION 7, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M.

TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND UTILITIES AS DESCRIBED IN THAT INSTRUMENT RECORDED ON FEBRUARY 11, 2004, UNDER AUDITOR'S FILE NO. 200402110099, RECORDS OF SKAGIT COUNTY, WASHINGTON.

ALSO TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS, PARKING, SIGNS AND UTILITIES AS DESCRIBED IN THAT INSTRUMENT RECORDED ON MARCH 15, 2004 UNDER AUDITOR'S FILE NO. 200403150158 AND RE-RECORDED APRIL 8, 2004, UNDER AUDITORS FILE NO. 200404080093, RECORDS OF SKAGIT COUNTY, WASHINGTON.

SITUATE IN THE COUNTY OF SKAGIT, STATE OF WASHINGTON.