



200904240095
Skagit County Auditor

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AFTER RECORDING MAIL TO:
Merrill Lynch Commercial Finance Corp.
Attn: Sandy Savich
222 North LaSalle Street 17th Fl
Chicago, IL 60601

Document Title(s): (or transactions contained therein)
1. Subordination, Non-Distribution and Attornment Agreement

Reference Number(s) of Documents assigned or released:
LS# 4801200106 DT# 206806300174

Grantor(s): (Last name first, then first name and initials)

- PETCO ANIMAL SUPPLIES STORES, INC.
MT VERNON OFFICE PET PARTNERS, L.P.

Grantee(s): (Last name first, then first name and initials)

- Merrill Lynch Commercial Finance Corp.

 **First American Title Insurance Company**

GUARDIAN NORTHWEST TITLE CO.
94405

(this space for title company use only)

Abbreviated Legal Description as follows: (i.e. lot/block/plat or section/township/range/quarter/quarter)

Section 18, Township 34, Range 4; Ptn. NE (aka Tract 2A and Ptn, Tracts 2 and 3A, BSP No. MV-1-94)

Assessor's Property Tax Parcel/Account Number(s): P107485 and P107487

NOTE: *The auditor/recorder will rely on the information on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.*

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, made this 21 day of April, 2009, by and between PETCO ANIMAL SUPPLIES STORES, INC., a Delaware corporation ("Tenant"), having a place of business at 201 East College Way, Suite B, Mount Vernon, WA 98273 and Merrill Lynch Commercial Finance Corp., a Delaware Corporation with an address of 222 North LaSalle Street, Chicago, Illinois 60601 (hereinafter called the "Beneficiary").

WITNESSETH:

WHEREAS, by Lease dated July 9, 1997 (hereinafter referred to as the "Lease"), Mt. Vernon Office Pet Partners, L.P. ("Landlord") leased and rented to Tenant certain premises located at 201 East College Way, #B, Mt. Vernon, WA 98273, (the "Property"), a more particular description of which Property appears in Exhibit A attached hereto and by this reference made a part hereof; and

WHEREAS, the Beneficiary is the holder of a Mortgage of the Property (hereinafter referred to as the "Mortgage") and Tenant wishes to induce Lender to consent to the aforesaid Lease; and,

WHEREAS, Tenant and the Beneficiary desire hereby to establish certain rights, safeguards, obligations and priorities with respect to their respective interests by means of the Subordination, Non-Disturbance and Attornment Agreement:

NOW THEREFORE, for and in consideration of the premises and of the mutual covenants and promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Tenant and the Beneficiary agree as follows:

1. The Lease and the rights of Tenant thereunder are and shall be subject and subordinate to the lien of the Mortgage and to all of the terms, conditions and provisions thereof, to all advances made or to be made thereunder, to the full extent of the principal sum and interest thereon from time to time secured thereby, and to any renewal, substitution, extension, modification or replacement thereof, including any increase in the indebtedness secured thereby or any supplements thereto. In the event that the Beneficiary or any other person (the Beneficiary, any other such person and their successors and assigns being referred to herein as the "Purchaser") acquires title to the Property pursuant to the exercise of any remedy provided for in the Mortgage or by reason of the acceptance of a deed in lieu of foreclosure, Tenant covenants and agrees to attorn to and recognize and be bound to Purchaser as its new Landlord, and subject to the proviso in Paragraph 3 of this Agreement, the Lease shall continue in full force and effect as a direct Lease between Tenant and Purchaser.
2. So long as the Lease is in full force and effect and Tenant is not in default under any provision of the Lease or this Agreement beyond Tenant's right to cure such default under the Lease, and no event has occurred that would entitle Landlord to terminate the Lease without further action by Landlord or would entitle Landlord to dispossess the Tenant thereunder beyond Tenant's right to notice and cure under the Lease:
 - (a) the right of possession of Tenant to the leased premises shall not be terminated or disturbed by any steps or proceedings taken by the Beneficiary in the exercise of any remedy or rights under the Mortgage; and
 - (b) the Lease shall not be terminated or affected by said exercise of any remedy or rights provided for in the Mortgage and the Beneficiary hereby covenants that any sale by it of the Property pursuant to the exercise of any rights and remedies under the Mortgage, or otherwise shall be made subject to the Lease and the rights of Tenant thereunder.
3. In no event shall the Trustee of the Mortgage, or the Beneficiary or any other Purchaser be:
 - (a) liable for any act or omission of any prior landlord, including the Landlord, provided that, nothing herein is intended to release Beneficiary or any other Purchaser from its obligations under the Lease prospectively;
 - (b) liable for the return of any security deposit;
 - (c) subject to any offsets or defenses that the Tenant might have against any prior landlord, including the Landlord; but nothing contained herein in his agreement shall constitute a waiver or release of Tenant's rights and/or remedies with respect to any matters that may be disclosed pursuant to an audit, inspection or examination of the books and records of Landlord (or those acting under the authority or at the direction of Landlord) as provided in the Lease,



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including without limitation, with respect to taxes and common area maintenance expenses; notwithstanding that the foregoing might arise subsequent to the date of this agreement, and further notwithstanding that the exercise by Tenant of any such rights and/or remedies may relate to matters preceding the date of this agreement;

- (d) bound by any payment of rent or additional rent that the Tenant might have paid to any prior landlord, including the Landlord, for more than the current month but monthly estimated payments for common area costs, taxes and/or insurance shall not be considered advance payments ; or
 - (e) bound by any amendment or modification of the Lease made without the Beneficiary's (or such other Purchaser's) prior written consent, if such agreement or modification would shorten the term of the Lease, materially increase Landlord's obligations thereunder or decrease Landlord's benefits, thereunder, or decrease Tenant's monetary obligations thereunder.
4. Tenant agrees that it will not, without the prior written consent of the Beneficiary, do any of the following, and any such purported action without such consent shall be void as against the Beneficiary:
 - (a) modify the Lease or any extensions or renewals thereof in such a way as to reduce the rent, accelerate rent payments, shorten the original term or change any renewal option;
 - (b) terminate the Lease; or
 - (c) tender or accept a surrender of the Lease or make a prepayment in excess of one month of rent thereunder, but monthly estimated payments for common area costs, taxes and/or insurance shall not be considered advance payments;
 5. Tenant agrees to give the Beneficiary copies of all notices of Landlord default(s) under the Lease which may result in termination of the Lease by Tenant. The Beneficiary shall have the right, but not the obligation, to remedy any Landlord default under the Lease and, for such purpose, Tenant hereby grants the Beneficiary, in addition to the period given to Landlord for remedying defaults, an additional thirty (30) days to remedy, or cause to be remedied, such default. Tenant shall accept performance by the Beneficiary of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord.
 6. Tenant agrees to certify in writing to the Beneficiary, upon request, whether or not any default on the part of Landlord exists under the Lease and the nature of any such default.
 7. Nothing contained herein shall prevent the Beneficiary from naming Tenant in any foreclosure or other action or proceeding initiated for the Beneficiary to avail itself of and complete any such foreclosure or other remedy.
 8. The foregoing provisions shall be self-operative and effective without the execution of any further instruments on the part of either party hereto. However, Tenant agrees to execute and deliver to the Beneficiary or to any person to whom Tenant herein agrees to attorn such other instruments as either shall request in order to effectuate said provisions.
 9. The agreements herein contained shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors, successors-in-interest and assigns, and, without limiting such, the agreements of the Beneficiary shall specifically be binding upon any Purchaser of the Property at foreclosure or at a sale under power of sale.
 10. This agreement contains the entire agreement and understanding of the parties, and may not be modified other than by an agreement in writing signed by the parties hereto or their respective successors-in-interest.
 11. This agreement may be signed in counterparts.
 12. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each term and provision hereof shall be valid and enforceable to the fullest extent permitted by law. This Agreement shall be governed in accordance with the laws of Illinois.



ACKNOWLEDGMENT

State of California
County of SAN DIEGO

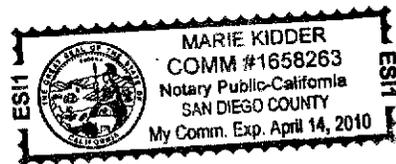
On April 21, 2009 before me, MARIE KIDDER, NOTARY PUBLIC
(insert name and title of the officer)

personally appeared JAMES J. LAMPASSI
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) 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 Marie Kidder (Seal)



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Merrill Lynch Commercial Finance Corp.

Sandy Savich

Name: Sandy Savich
Title: Vice President

STATE OF IL)
COUNTY OF Cook) ss:

On this 22nd day of April, 2008, personally appeared before me Tara Saddler, to me known to be SANDY SAVICH, VP of Merrill Lynch Commercial Finance Corp., a Delaware corporation, the corporation that executed the within and foregoing instrument, and acknowledged that said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

Tara Saddler

(Signature) Tara Saddler

(Print Name)

Notary Public in and for the State of IL
Residing at 1655 W. 94th Ct, Chicago, IL 60636
My commission expires 11-29-11



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EXHIBIT A

Property Description

see attached legal description



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**Schedule "C"
Legal description**

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 and 2A, City of Mount Vernon Binding Site Plan No. MV-1-94 BSP, approved may 31, 1994, and recorded May 31, 1994, in Volume 11 of Short Plats, page 77, under Auditor's File No. 9405310129, records of Skagit County, Washington, being a portion of the Northeast ¼ of Section 18, Township 34 North, Range 4 East, W.M..

TOGETHER WITH that portion of Lot 3A, said Binding Site Plan, described as follows:

Beginning at the Southeast corner of said Lot 3A; thence West, 504.00 feet along the South line thereof to the Westerly line of said Lot 3A; thence North 09°48'40" West, 36.04 feet along said Westerly line; thence South 89°50'52" East, 207.04 feet; thence South 00°09'08" West, 5.00 feet; thence South 89°50'52" East, 214.76 feet; thence North 00°09'08" East, 40.35 feet; thence North 89°56'35" East, 87.76 feet to the East line of said Lot 3A; thence South 00°24'07" East, 69.83 feet along said East line to the point of beginning.

ALSO TOGETHER WITH the following described portion of Lot 2B of said Mount Vernon Binding Site Plan No. MV-1-94BSP.

Beginning at the Northeast corner of said Lot 2B; thence South 00°00'00" West, 4.72 feet; thence North 90°00'00" East, 129.04 feet; thence North 00°00'00" West, 4.72 feet; thence South 90°00'00" East, 129.04 to the point of beginning.

AND TOGETHER WITH that portion of Lot 2B, Mount Vernon Binding Site Plan No. MV1-94 BSP, described as follows:

Beginning at the Southeast corner of Lot 2B; thence North 90°00'00" West 0.54 feet; thence North 0°00'00" East 149.92 feet; thence South 90°00'00" East 0.54 feet to the East line of said Lot 2B; thence South 0°00'00" East 149.92 feet to the true point of beginning.

EXCEPT that portion of said Lot 2 and 2A described as a whole as follows:

Beginning at the Northwest corner of said Lot 2B of Mount Vernon Binding Site Plan No. MV-1-94BSP; thence North 00°20'56" West, 25.08 feet; thence South 90°00'00" East, 93.06 feet; thence South 00°00'00" West, 25.08 feet; thence North 90°00'00" West, 92.91 feet to the point of beginning.

AND EXCEPT that portion of Lot 2 and of Lot 2B, Mount Vernon Binding Site Plan No. MV1-94 BSP, described as follows:

Beginning at the Northwest corner of said Lot 2B; thence North 90°00'00" East 92.91 feet to the true point of beginning; thence North 0°00'00" East 8.49 feet; thence North 90°00'00" East 128.5 feet; thence South 0°00'00" East 13.21 feet; thence North 90°00'00" West 128.5 feet; thence North 0°00'00" East 4.72 feet to the point of beginning.

