

# UNOFFICIAL COPY



Doc#: 1009834102 Fee: \$58.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 04/08/2010 01:53 PM Pg: 1 of 12

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

The Guardian Life Insurance Company  
of America  
7 Hanover Square, Floor 23-B  
New York, New York 10004  
Attn: Marcie Brown-Suarez

SPACE ABOVE THIS LINE FOR RECORDER'S USE

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT (this "Agreement"), made as of this 10/7 day of March, 2010, by and among CHICAGO TITLE LAND TRUST COMPANY as successor trustee to LaSalle Bank National Association f/k/a LaSalle National Bank, as successor trustee to LaSalle National Trust, N.A., not personally, but as Trustee under Trust Agreement dated February 1, 1974 and known as Trust No. 45786, having an address at c/o Joseph Freed and Associates LLC, 33 South State Street, Suite 400, Chicago, Illinois 60603 ("Landlord"), MICHAELS STORES, INC. a Delaware corporation, having an address at 8000 Bent Branch Drive, Irving, Texas 75063 ("Tenant"); and THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, a New York corporation, having an address at 7 Hanover Square, New York, New York 10004 ("Lender"), is made with reference to the following:

Lender has made a certain loan to Landlord (the "Loan") secured by a first lien on that certain real property (the "Land") described in Exhibit "A" annexed hereto together with the improvements thereon (collectively the "Property"), which lien has been perfected by the recordation of a Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement dated as of July 15, 2008 (such document, as at any time amended, restated, replaced, supplemented, consolidated or otherwise modified, being referred to hereinafter as the "Security Document"); and

Landlord and Tenant have executed a certain lease dated March 18, 2010 (the "Lease"), pursuant to which Landlord leased a portion of the Property to Tenant (the "Leased Premises") all as more fully described in the Lease; and

Landlord, Tenant and Lender are willing to agree and covenant that the Lease shall be subject and subordinate to the Security Document as more particularly hereinafter set forth.

NOW THEREFORE, the parties hereto agree as follows:

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1. So long as Tenant is not in default under the Lease, beyond any applicable notice and cure period provided in the Lease, the right of possession of Tenant to the Leased Premises as provided in the Lease shall not be affected or disturbed by Lender in the exercise of any of its rights under the Security Document or any note secured thereby and any sale of the Property pursuant to the exercise of any rights and remedies under the Security Document or otherwise shall be made subject to Tenant's right of possession of the Leased Premises under the Lease.

2. If the Property is sold at a foreclosure sale under the Security Document or if the Property is conveyed by deed-in-lieu of foreclosure, Tenant shall attorn to Lender or any purchaser of the Property and, subject to the other provisions of this Agreement, the Lease shall continue, in accordance with its terms, between Tenant and Lender or such purchaser (Lender or such purchaser being hereinafter sometimes called "Successor Landlord").

3. Successor Landlord shall not be (a) liable for any act or omission of any prior landlord (including Landlord); provided, however, Tenant may give Successor Landlord notice of any event of default which originated prior to, and continues to exist subsequent to, the succession of Successor Landlord to the interest of "landlord" under the Lease (a "Continuing Default") and, except as hereinafter provided, Successor Landlord shall have the same obligation to cure any such Continuing Default, and Tenant shall have the same rights and remedies should Successor Landlord fail to cure the Continuing Default, as if the Continuing Default had originated subsequent to the succession of Successor Landlord to the interest of "landlord" under the Lease, (b) liable for the return of any security deposit not actually received by Successor Landlord, (c) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord), except to the extent such offsets or defenses are provided under the Lease (including in connection with a Continuing Default), (d) bound by any rent paid by Tenant more than thirty (30) days in advance; provided, however, Tenant's estimated payments towards its share of Common Area Charges (as defined in the Lease), insurance, Real Estate Taxes (as defined in the Lease) or otherwise shall not be deemed "paid in advance" when paid in accordance with the terms of the Lease, and such estimated payments shall be credited to Tenant's account and recognized by Successor Landlord the same as if such estimated payments had actually been paid to Successor Landlord, or (e) bound by any amendment or modification of the Lease made without the written consent of Successor Landlord, or (f) liable for the performance of or payment toward any improvements to the Property (including the Leased Premises) related to or arising out of Tenant's occupancy of the Premises (collectively, the "Tenant Improvements") without regard to whether such Tenant Improvements are or were to be performed by Landlord, Tenant, or otherwise, it being agreed, however, that Successor Landlord shall remain liable for the performance of repairs and maintenance that "landlord" is required to perform under the Lease. Notwithstanding anything to the contrary in this Agreement or the Lease, in no event shall Successor Landlord be liable for (i) a Continuing Default that requires Successor Landlord to commence or diligently

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pursue legal proceedings as required under Section 16.4.2 of Exhibit C to the Lease (it being understood that, in such event, Tenant shall continue to have all other rights and remedies available to it under said Section 16.4.2 of Exhibit C to the Lease), or (ii) any consequential, special or punitive damages that result from any Continuing Default, it being agreed that Tenant may pursue (x) any prior landlord (including Landlord) for consequential, special or punitive damages that result from a Continuing Default, and (y) Lender (if Lender succeeds to the interest of landlord under the Lease) for consequential, special or punitive damages that result from an event of default under the Lease (beyond applicable notice and grace periods) of Lender, as Successor Landlord.

4. The Lease shall be subject and subordinate to the terms and conditions of the Security Document and the lien thereof and to all advances made or to be made thereunder, and to any renewals, extensions, modifications or replacements thereof, including any increases therein or supplements thereto. Tenant further agrees that any conflict between the provisions of the Lease and the provisions of the Security Document, including without limitation, provisions concerning disposition of insurance proceeds and condemnation or eminent domain awards, shall be resolved in favor of the Security Document.

5. The foregoing provisions shall be self operative. Tenant, however, agrees to execute and deliver to Lender, or to any person to whom Tenant herein agrees to attach such other instrument (in a form reasonably acceptable to Tenant) as either shall reasonably request in order to further confirm the foregoing provisions.

6. Landlord and Tenant will each notify Lender of any default of Tenant or Landlord or any circumstance or other event arising under the Lease which would entitle or permit Landlord or Tenant to cancel the Lease, abate any rent payable thereunder, or pursue any "self-help" remedy thereunder; provided, however, that in the event of an emergency that entitles Tenant to the remedy of "self help", Tenant shall give Lender such notice as is practicable under the circumstances. Tenant further agrees that notwithstanding any provision of the Lease, no notice, cancellation or termination thereof shall be effective unless Lender shall have received such notice and have failed within thirty (30) days after the expiration of the cure period provided to Landlord under the Lease, if any such cure period is applicable (it being understood that in the event the Lease does not provide Landlord the opportunity to cure the event that triggered the cancellation or termination right then Lender shall likewise have no such right to cure), to cure or commence to cure such default and thereafter diligently prosecute same to completion. Lender shall have the right, but not the obligation, to cure any default; provided, however, that if Lender elects to cure a default by Landlord under the Lease and such cure by Lender can only be effectuated by entering the Leased Premises, then Lender shall, prior to entering the Leased Premises, provide Tenant with a copy of Lender's insurance certificate evidencing liability coverage to the same extent and on the same limits that Landlord is required to carry under the Lease (which may include a certificate of insurance identifying Lender as an additional insured/loss payee under

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Landlord's insurance policy, provided Landlord's insurance satisfies the insurance coverages and limit amounts required by the Lease).

7. Upon Lender's request and at no cost and expense to Lender, Tenant shall at any time and from time to time, upon not less than thirty (30) days prior written notice from Lender, execute, acknowledge and deliver to Lender or such other person as shall be designated by Lender, an estoppel certificate that shall certify the following:

- (a) that the Lease is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that the Lease as so modified is in full force and effect), and the date to which the rental and other charges are paid in advance, if any,
- (b) that there are not, to Tenant's knowledge, any uncured defaults under the Lease on the part of Landlord or specifying such results, if any are claimed,
- (c) the date of commencement of rents and expiration of the term thereof, and
- (d) any other reasonable factual matters as shall be requested by Lender.

Tenant shall execute the estoppel certificate at no cost or expense to Landlord for the first two (2) requests in any twelve (12) month period during the Lease Term (as defined in the Lease); provided however, that for each succeeding request in said twelve (12) month period, Tenant may charge Landlord such reasonable expenses and fees, not to exceed \$500.00, as are appropriate for the review and preparation of same; provided, however, that in the event that Tenant shall have delivered to Lender a notice of Landlord's default and Lender shall, in response to such a notice, request an estoppel certificate from Tenant, there shall be no charge to Landlord or Lender for such estoppel certificate. It is understood that the Lender shall not be required to pay for the cost and expense of an estoppel certificate and in all instances, the cost of same, as set forth above, shall be paid by Landlord and if Landlord does not pay same, Lender shall have the right, but not the obligation, to pay same on behalf of the Landlord and the cost of same shall be added to the amount Landlord is indebted to Lender under the Security Document, the note secured thereby and the other loan documents in connection therewith, it being agreed that Landlord agrees to execute and deliver to Lender any instruments necessary to effectuate the foregoing.

8. Any notice, request, demand, consent, approval or other communication required or desired to be given or delivered under this Agreement or

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other instrument contemplated hereby shall be in writing, signed by the party giving such notice and shall be given by hand delivery to the other party or parties or addressed to the party or parties for whom it is intended at the address or addresses set forth below and sent by United States certified or registered mail, postage prepaid, return receipt requested or by a nationally recognized overnight courier. Notices sent to Lender shall be handed or addressed to the following persons:

The Guardian Life Insurance Company of America  
7 Hanover Square  
20th Floor - C  
New York, New York 10004  
Attention: Manager  
Mortgage Servicing  
Real Estate Investment

with a copy of said notice to:

Vice President, Investment and Real Estate Counsel  
Law Department  
at the address immediately above written except to:  
23rd Floor - B

and notices sent to Landlord, shall be addressed as follows:

Chicago Title Land Trust Company  
trustee under Trust No. 45786  
c/o Joseph Freed and Associates LLC  
33 South State Street  
Suite 400  
Chicago, Illinois 60603  
Attention: General Counsel

and notices sent to Tenant, shall be addressed as follows:

Michaels Stores, Inc.  
8000 Bent Branch Drive  
Irving, Texas 75063  
Attention: Sr. Director – Real Estate Administration

with a copy of said notice to:

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Michaels Stores, Inc.  
8000 Bent Branch Drive  
Irving, Texas 75063  
Attention: Real Estate Attorney

The addresses set forth above may be changed by notice given in accordance with the provisions of this Paragraph 8. If notice is given in accordance with the provision of this Paragraph 8, it shall be deemed given upon receipt thereof, upon refusal of the addressee to accept delivery thereof, or upon inability to effect delivery thereof.

9. Tenant acknowledges and agrees that it has notice that the Lease and the rent and all other sums due under the Lease have been assigned to Lender as security for the obligations secured by the Security Document. If Lender notifies Tenant of the occurrence of an event of default under the Security Document and demands that Tenant pay any rent and other sums due under the Lease directly to Lender or as otherwise directed by Lender, Tenant shall honor that demand and pay such rent or other sums due under the Lease directly to Lender or as otherwise directed pursuant to such notice. In complying with these provisions, Tenant shall be entitled to rely solely upon the notices given by Lender, and Landlord irrevocably grants its consent to Tenant's compliance with such notice from Lender. Further, Landlord agrees to indemnify and hold Tenant harmless from and against any and all loss, claim, damage or liability arising out of Tenant's compliance with such notice. Tenant shall be entitled to full credit under the Lease for any rents paid to Lender in accordance with the provisions of this Paragraph 9 to the same extent as if such rents were paid directly to Landlord.

10. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns (including any person or entity who or which shall become the owner of the Property by reason of a foreclosure of the Security Document or acceptance of a deed in lieu of foreclosure or otherwise) except that it shall not inure to the benefit of any successor or assign of Landlord or Tenant whose status was acquired in violation of the Security Document, the Lease or this Agreement unless Lender shall, at its option to be exercised in its sole and uncontrolled discretion, notify Landlord or Tenant, as the case may be, in writing to the contrary.

11. This Agreement may be executed by the parties hereto in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement.

12. This Agreement shall be governed by, and construed and interpreted in accordance with the laws of the state in which the Property is located.

*[Signature page to follow]*

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

“LANDLORD”

CHICAGO TITLE LAND TRUST COMPANY as successor trustee to LASALLE BANK NATIONAL ASSOCIATION f/k/a LaSalle National Bank, as successor trustee to LaSalle National Trust, not personally, but as Trustee under Trust Agreement dated February 1, 1974 and known as Trust No. 45786


This instrument is executed by the undersigned Land Trustee not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

By:   
Name: **MARIO V. GOTANCO**  
Title: **TRUST OFFICER**

“TENANT”

MICHAELS STORES, INC.,  
a Delaware corporation

By:



Michael J. Veitenheimer  
Senior Vice President,  
General Counsel and Secretary

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“LENDER”

THE GUARDIAN LIFE INSURANCE  
COMPANY OF AMERICA,  
a New York corporation/

By:

  
Name: Mitchell E. Ryan  
Title: Senior Director  
Real Estate Investments

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State of Illinois )

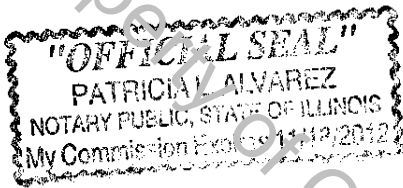
SS.

County of Cook )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that the above named Assistant Vice President of **CHICAGO TITLE LAND TRUST COMPANY**, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Assistant Vice President appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of the Company; and the said Assistant Vice President then and there caused the corporate seal of said Company to be affixed to said instrument as his own free and voluntary act and as the free and voluntary act of the Company.

Given under my hand and Notarial Seal this 31<sup>st</sup> day of March, 2010.

  
\_\_\_\_\_  
NOTARY PUBLIC



Proprietary Cook County Clerk's Office

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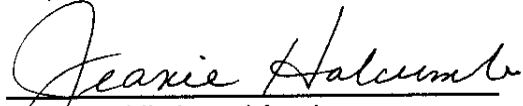
## ACKNOWLEDGMENTS

### TENANT

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

BEFORE ME, the undersigned authority, on this day personally appeared Michael J. Veitenheimer, Senior Vice President, General Counsel and Secretary of MICHAELS STORES, INC., a Delaware corporation, who acknowledged that he was duly authorized to execute this agreement on behalf of said corporation.

GIVEN under my hand and seal of office this 2<sup>nd</sup> day of April, 2010.

  
\_\_\_\_\_  
Notary Public in and for the  
State of Texas

Jeanie Halcumb  
Notary's Printed Name

My Commission Expires: February 20, 2012



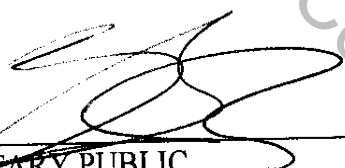
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STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

On the 30<sup>th</sup> day of March in the year 2010 before me, the undersigned, a Notary Public, personally appeared Mitchell E. Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
NOTARY PUBLIC

MARCIE BROWN SUAREZ  
NOTARY PUBLIC, State of New York  
No. 01BR6203423  
Qualified in New York County  
Commission Expires April 06, 2013

SEAL

Notary of Cook County Clerk's Office

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## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL 1:

LOTS 1 THROUGH 12 INCLUSIVE IN NORRIDGE COMMONS SUBDIVISION, BEING A SUBDIVISION OF LOTS 9, 12, 13, 14, 15 & PARTS OF LOTS 16 AND 17 IN FULLER'S SUBDIVISION, AND PART OF THE SOUTH WEST FRACTIONAL 14, NORTH OF THE INDIAN BOUNDARY LINE, IN SECTION 18, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT OF SAID SUBDIVISION RECORDED DECEMBER 30, 1977 AS DOCUMENT NO. 24266265 AND AS CORRECTED BY CERTIFICATE CORRECTION RECORDED DECEMBER 5, 1980 AS DOCUMENT NO. 25693808 (EXCEPTING FROM SAID LOT 7 AND LOT 10 THAT PART ACQUIRED BY THE STATE OF ILLINOIS DEPARTMENT OF TRANSPORTATION IN CONDEMNATION CASE NO. 99L50584, AND THAT PART OF CONVEYED BY DEED RECORDED OCTOBER 3, 2001 AS DOCUMENT 0010923543 TO THE VILLAGE OF NORRIDGE), IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

NON-EXCLUSIVE EASEMENT OR THE BENEFIT OF PARCEL 1 FOR THE PURPOSE OF ACCESS, PARKING VEHICLES AND THE PASSAGE OF PEOPLE AND MOTOR VEHICLES CREATED BY THE RECIPROCAL APPURTENANT EASEMENT RECORDED FEBRUARY 17, 1977 AS DOCUMENT 23823377 OVER THE AREA DESCRIBED IN EXHIBITS C-1 AND C-1A THEREIN.

#### PARCEL 3:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY RECIPROCAL EASEMENT, OPERATING AND MAINTENANCE AGREEMENT RECORDED AS DOCUMENT 23815455 FOR PARKING VEHICLES AND INGRESS AND EGRESS BETWEEN PUBLIC STREETS AND THE CENTER PARKING AREA OVER COMMON AREAS OVER AND UPON THAT PART OF LOT 17 IN FULLER'S SUBDIVISION, MORE PARTICULARLY DESCRIBED ON EXHIBIT 'B' ATTACHED THERETO.

PIN 13-18-318-016

Address: 7010 W. Forest Preserve Drive  
Norridge, IL 60706