

UNOFFICIAL COPY

Lease No. 526499.11



RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Doc#: 1028722067 Fee: \$54.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 10/14/2010 01:23 PM Pg: 1 of 10

First American Title Insurance Company
Attn: Heather Vree
30 N. LaSalle St, Suite 2700
Chicago, IL 60602

NCS-452721

10 OCT 12 HV DEC

Space Above This Line for Recorder's Use

SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT

THIS AGREEMENT is made this 13th day of October, 2010, by Meijer Stores Limited Partnership, a Michigan limited partnership, having its principal office and place of business located at 2929 Walker Avenue, N.W., Grand Rapids, MI 49544 - Attn: Real Estate Department ("Tenant"), Meijer, Inc., a Michigan corporation ("Guarantor"), John Hancock Life Insurance Company (U.S.A.), its successors and assigns, having its principal place of business located at c/o Real Estate Finance Group, 197 Clarendon Street, C-3, Boston, MA 02116 ("Lender"), and with regard to the provisions expressly set forth below, (a) Melrose Park Equity, LLC, as to an undivided 25.21% interest, (b) Melrose Park Investments, L.P., as to an undivided 19.97% interest, (c) Melrose Park Associates, LLC, as to an undivided 5.59% interest, (d) NMC Melrose Park, LLC, as to an undivided 18.67% interest, and (e) NMC Grove Melrose, LLC, as to an undivided 30.56 % interest, having its principal office and place of business located at c/o NewMark Merrill Companies 5850 Canoga Avenue, Suite 650, Woodland Hills, CA 91367 (together the "Landlord") with reference to the following facts:

RECITALS:

A. Landlord (either itself or as successor-in-interest to a previous landlord) and Tenant entered into a certain lease dated August 10, 2010 as amended by First Amendment to Lease dated as of August 30, 2010 and Second Amendment to Lease dated as of September 20, 2010 (together, the "Lease") covering certain space ("Premises") in the building located at and being part of the Winston Plaza Shopping Center, Village of Melrose Park, Cook County, Illinois, which property is more particularly described in the Mortgage (as hereinafter defined) and on Exhibit A attached hereto ("Property");

B. Pursuant to a Guaranty Agreement dated August 10, 2010., Guarantor provided Landlord with a guarantee of the performance, payment and certain other obligations under the Lease.

C. Lender has agreed to make a loan ("Loan") to Landlord, which Loan is to be evidenced by a note and secured, inter alia, by a first lien instrument in favor of Lender covering the Property and upon the terms and conditions described therein, which shall be recorded in the Official Records of Cook County, Illinois (said instrument and all amendments, modifications, renewals, substitutions, extensions, consolidations and replacements thereto and thereof, as applicable, are hereinafter collectively referred to as "Mortgage");

D. It is a condition precedent to obtaining the Loan that (i) the Mortgage be and remain at all times a first lien or charge upon the Property prior and superior to the Lease; (ii) Tenant specifically subordinate the Lease to the lien or charge of the Mortgage and (iii) Tenant attorn to Lender and its successors and assigns in the event of the foreclosure or other proceeding to enforce the Mortgage;

UNOFFICIAL COPY

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce Lender to enter into the above-referenced Loan, Lender and Tenant hereby agree as follows:

1. Subordination. The Lease and any extensions, renewals, replacements, consolidations or modifications thereof, and all the right, title and interest of the Tenant in and to the Premises, and all rights of the Tenant thereunder, are and shall be subject and subordinate to the Mortgage and the lien and terms thereof and any and all advances made thereunder, subject to and in accordance with the terms of this Agreement.

2. Lender's Exercise of Remedies. In the event of (a) the institution of any foreclosure, trustee's sale or other like proceeding, (b) the appointment of a receiver for the Landlord or the Property, (c) the exercise of rights to collect rents under the Mortgage or an assignment of rents, (d) the recording by Lender or its successor or assignee of a deed in lieu of foreclosure for the Property, or (e) any transfer or abandonment of possession of the Property to Lender or its successor or assigns in connection with any proceedings affecting Landlord under the Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (any such foreclosure, recording of a deed in lieu of foreclosure, or transfer or abandonment of the Property referred to in the preceding clauses (a) through (e) is hereinafter called a "Transfer", and Lender or any successor or assignee of Lender taking title to the Property in connection with a Transfer is hereinafter called the "Transferee"), Tenant shall have the same remedies against such Transferee for the breach of the Lease that Tenant would have had against the Landlord if Transferee had not succeeded to Landlord's interest; provided, however, that even though provisions in the Lease may be to the contrary, Lender shall not: (i) be liable for any damages (including, without limitation, consequential damages) or other relief or be subject to any offsets, defenses or counterclaims of any kind attributable to any event, act, omission or default under the Lease, including, but not limited to, a breach of any representation or warranty under the Lease, of Landlord or any prior landlord under the Lease, except for any continuing event, act or omission of which Lender has been provided notice as described in Paragraph 4 below, and/or except for any of Landlord's maintenance obligations under the Lease which are ongoing at the time of Transfer of the Property to a Transferee, and if any such offset or defense is expressly provided for in the Lease, (ii) be bound by any prepayment by Tenant of more than one month's installment of rent unless such prepayment is expressly required in the Lease or has been specifically approved in writing by Lender, or be liable or responsible for any security deposit or other sums which Tenant may have paid under the Lease unless such deposit or other sums have been physically delivered to Transferee, (iii) be bound by any modification, amendment, cancellation or termination (except a termination in accordance with Paragraph 4 below) of the Lease after the date hereof, or any waiver of any terms of the Lease unless the same shall have been approved in writing by Lender, or (iv) be liable or responsible for the payment of any brokerage or other commission or compensation due with respect to the Lease or any renewal, extension, expansion or other amendment thereof.

3. Attornment and Non-Disturbance. Provided Tenant is not in default under the terms of the Lease beyond any applicable cure period set forth in the Lease, and the Lease is in full force and effect, then, except as set forth in Paragraphs 2 and 5(b), (c), (d) and (g): (i) any default under the Mortgage and any proceeding to foreclose the same will not disturb Tenant's possession, use or quiet enjoyment under the Lease; (ii) Tenant's rights and privileges under the Lease during its term and any extension or renewal of the term thereunder, which extension or renewal is exercised in accordance with the terms and conditions of the Lease, shall not be diminished or interfered with and the Lease will not be affected or cut off thereby; (iii) Lender will not join Tenant as a defendant in any action or proceeding to foreclose the Mortgage unless such joinder is required to foreclose the Mortgage, and then only for such purpose and not for the purpose of terminating the Lease; and (iv) notwithstanding any such foreclosure or other Transfer of the Property to Transferee, Transferee will recognize the Lease and will accept the attornment of Tenant thereunder; provided however, that this Paragraph 3 shall not be construed as a waiver or amendment by Lender of any covenant, condition or agreement specifically stated in the Lease which provides the Landlord with an option to cancel or terminate the Lease for any reason unrelated to a default by Tenant in the performance or observance of any of its obligations under the Lease.

Tenant shall attorn to Transferee, including Lender if Lender becomes a Transferee, as the landlord under the Lease and Tenant does hereby affirm its obligations under the Lease to Transferee. Said attornment is subject to the limitation of Transferee's obligations set forth in Paragraph 2 above and Paragraph 5(d) below and shall be effective and self-operative without the execution of any further instruments upon Transferee's succeeding to the interest of

UNOFFICIAL COPY

the landlord under the Lease. Tenant and Lender shall, however, confirm the provisions of this paragraph in writing upon request by either of them.

4. Lender's Right to Cure. Notwithstanding anything to the contrary in the Lease or this Agreement, Tenant shall provide Lender with written notice of any default of Landlord under the Lease (which can be a copy of the notice provided to the Landlord) if such default is of such a nature as to give the Tenant a right to terminate the Lease, to reduce rent thereunder or to credit or offset any amounts against future rents, and will not seek to terminate the Lease or reduce the rent or credit or offset against rent or claim a partial or total eviction until giving such notice and providing Lender an opportunity to cure consistent with the timeframe stated in the Lease. Lender shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent provided herein or to the extent that Lender agrees otherwise in writing.

5. Miscellaneous.

(a) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of Transferee, all obligations and liabilities of Transferee under this Agreement for actions of Transferee after such assignment or transfer shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Transferee's interest is assigned or transferred; and provided further that the interest of Tenant under this Agreement may not be assigned or transferred except to the extent the assignment of Tenant's interest in the Lease is permitted under the Lease.

(b) Tenant acknowledges that it has notice that the Lease and the rent and all other sums due thereunder have been assigned to the Lender as part of the security for the note secured by the Mortgage and upon written notice from Lender to Tenant of a default under the Mortgage and the stated requirement in such notice that all rents and other payments due under the Lease be paid directly to Lender, Tenant shall pay its rent and all other sums due under the Lease directly to Lender, and Landlord, by its execution hereof, hereby directs Tenant to make such payment to Lender. Such payments shall constitute payments under the terms of the Lease and Landlord shall have no claim against Tenant by reason of such payments made to Lender.

(c) Tenant acknowledges and agrees that it shall not terminate the Lease in the event of a default by Landlord unless Tenant provides Lender written notice and an opportunity to cure as described in Paragraph 4 above. In addition, Tenant agrees that it shall not terminate or cancel the Lease by agreement with the Landlord without Lender's prior written consent. In the event such right is expressly set forth in the Lease, Tenant shall pay to Lender any and all termination fees or other consideration to be paid to Landlord in connection with such termination or cancellation and Landlord, by its execution hereof, hereby directs Tenant to make such payments or provide such other consideration to Lender.

(d) Tenant covenants and acknowledges that it has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Premises or the Property, or any portion thereof or any interest therein. Tenant hereby acknowledges and agrees that to the extent that Tenant has, or hereafter acquires, any such right or option, any such right or option is subject and subordinate to the Mortgage. Notwithstanding the foregoing, such right or option shall remain in effect, but (i) such right or option shall not apply to any Transfer of the Premises or the Property, and (ii) Lender shall have no obligation to release or discharge the Premises or the Property from the lien of the Mortgage unless and until Lender shall receive payment in full of all outstanding principal, accrued interest, fees, costs, expenses (including without limitation, reasonable attorneys' fees and expenses) and prepayment premium, if any. Tenant further acknowledges and agrees that any right of Tenant to cancel the Lease in order to relocate to property other than the Property to be leased or purchased from Landlord, and any right of Tenant to any inducement to be provided by Landlord but not set forth in the Lease shall be extinguished by any Transfer.

(e) Any provision of the Mortgage to the contrary notwithstanding, with regard to the property damage insurance required pursuant to the terms and provisions of the Lease, or with regard to condemnation proceeds paid with respect to the Premises and Property, Landlord and Lender agree that all insurance proceeds or condemnation proceeds paid or payable with respect to the Premises and Property and received by Lender shall be applied to and

UNOFFICIAL COPY

paid for reconstruction or repair of improvements, if either Landlord or Tenant elects or is obligated to restore or repair such improvements, as set forth in and subject to the terms and conditions of the Lease.

(f) Neither the Mortgage nor any other security instrument executed in conjunction therewith shall cover or be construed as subjecting in any manner to the lien thereof any trade fixtures, signs, or other personal property at any time furnished or installed by or for Tenant or its subtenants or licensees on the Premises regardless of the manner or mode of attachment thereof.

(g) This Agreement is the whole and only agreement between the parties hereto with regard to the subordination of the Lease to the lien or charge of the Mortgage. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto.

(h) This Agreement shall be deemed to have been made in the state where the Property is located and the validity, interpretation and enforcement of this Agreement shall be determined in accordance with the laws of such state.

(i) In the event any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of this Agreement, or to recover damages for the breach thereof, the party prevailing in any such action or proceeding shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees, costs and expenses incurred by the prevailing party.

(j) Any notices or communications required or permitted to be given or made hereunder shall be deemed to be so given or made when in writing and delivered in person or sent by United States registered or certified mail, postage prepaid, or by nationally recognized overnight courier service, directed to the parties at the following addresses or such other addresses as they may from time to time designate in writing:

Lender: John Hancock Life Insurance Company (U.S.A.)
c/o Real Estate Finance Group
197 Clarendon Street, C-3
Boston, MA 02116
Reference Loan No. 526499:11

Tenant: Meijer Stores Limited Partnership
Attention: Real Estate Department
2929 Walker Avenue, N.W.
Grand Rapids, Michigan 49544

Notices or communications mailed in the U.S. mail shall be deemed to be served on the third business day following mailing, notices or communication served by hand or by overnight courier shall be deemed served upon receipt.

(k) This document may be signed in counterparts which together shall be deemed to be one and the same document. The signature pages from any such counterpart may be attached to another such counterpart to form one complete set of signatures for this document.

(l) The parties hereto represent and warrant that their respective signatories to this Agreement have been duly authorized by the Tenant, Landlord and Lender, as applicable.


UNOFFICIAL COPY

IN WITNESS WHEREOF, this Agreement has been signed and delivered as of the date and year first above set forth.

TENANT:

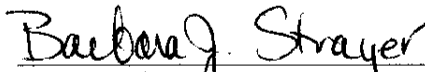
Meijer Stores Limited Partnership,
a Michigan limited partnership

By: Meijer Group, Inc., a Michigan corporation
Its General Partner

By: 
Name: **Michael L. Kinstle**
Title: **Vice President-Real Estate**
duly authorized

State of Michigan)
County of Kent) ss.

On this 21st day of Sept, 2010, before me, the undersigned Notary Public, personally appeared Michael L. Kinstle, proved to me through satisfactory evidence of identification, which was/were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose(s) as Vice President for Meijer Group, Inc.


Signature of Notary
My commission expires: _____
BARBARA J. STRAYER
Notary Public, Ottawa Co., MI
Acting in Kent Co., MI
My Commission Expires 4/16/2014

(Seal)

LEGAL 
BUS _____

UNOFFICIAL COPY

GUARANTOR:

Meijer, Inc.

By: _____

Name: **Michael L. Kinstle**
Title: **Vice President-Real Estate**

State of Michigan)
County of Kent) ss.

On this 21st day of Sept., 2010, before me, the undersigned Notary Public, personally appeared Michael L. Kinstle, proved to me through satisfactory evidence of identification, which was/were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose(s) as Vice President for Meijer, Inc.

Barbara J. Strayer (Seal)
Signature of Notary

BARBARA J. STRAYER
Notary Public, Ottawa Co., MI
Acting In Kent Co., MI
My Commission Expires 4/16 2014

My commission expires: _____

LEGAL [Signature]
BUS _____

UNOFFICIAL COPY

LENDER:
John Hancock Life Insurance Company (U.S.A.)

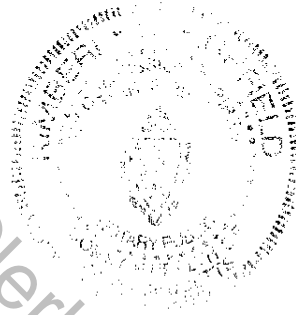
By: _____
Name: **Timothy J. Malik**
Title: **Assistant Vice President**
duly authorized

THE COMMONWEALTH OF MASSACHUSETTS)
)
COUNTY OF SUFFOLK) ss.

On this 11th day of October, 2010, before me, the undersigned Notary Public, personally appeared Timothy J. Malik, proved to me through satisfactory evidence of identification, which was/were personally known to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose(s) as Assistant Vice President John Hancock Life Insurance Company (U.S.A.).

[Signature]
Signature of Notary
My commission expires: 3.3.17

(Seal)



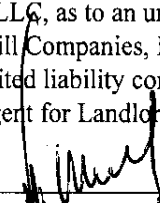
UNOFFICIAL COPY

As to Paragraphs 5(b), (c) and (d):

LANDLORD:

Melrose Park Equity, LLC, as to an undivided 25.21% interest,
Melrose Park Investments, L.P., as to an undivided 19.97% interest,
Melrose Park Associates, LLC, as to an undivided 5.59% interest,
NMC Melrose Park, LLC, as to an undivided 18.67% interest, and
NMC Grove Melrose, LLC, as to an undivided 30.56 % interest

By: NewMark Merrill Companies, LLC,
a California limited liability company
as authorized agent for Landlord

By: 
Name: SANFORD D. SIGAL
Title: CEO

State of _____)
County of _____) ss.

On this ____ day of _____, 2010, before me, the undersigned Notary Public, personally appeared _____, proved to me through satisfactory evidence of identification, which was/were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose(s) as _____ for NewMark Merrill Companies, LLC.

Signature of Notary

(Seal)

My commission expires: _____

UNOFFICIAL COPY

State of California)
) ss.
County of Los Angeles)

On September 27, 2010, before me, Linda E. Allen, a Notary Public, personally appeared Sanford D. Sigal, 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 Linda E. Allen (Seal)

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Loan No. 526499:11

EXHIBIT A**LEGAL DESCRIPTION**

A PARCEL OF LAND IN THE NORTHEAST 1/4 OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT 94.82 FEET SOUTH OF THE NORTH LINE OF AFORESAID SECTION 3 AND 33.0 FEET WEST OF THE EAST LINE OF AFORESAID SECTION 3, BEING THE INTERSECTION OF THE WEST LINE OF 9TH AVENUE AND THE SOUTH LINE OF NORTH AVENUE; THENCE NORTH 89 DEGREES 42 MINUTES 10 SECONDS WEST IN THE SOUTH LINE OF AFORESAID NORTH AVENUE, TO A POINT 95.68 FEET SOUTH OF AFORESAID NORTH LINE OF SECTION 3, A DISTANCE OF 1628.12 FEET, TO A POINT IN THE EAST LINE OF 14TH AVENUE AS SHOWN IN THE PLAT OF SUBDIVISION OF WINSTON PARK UNIT NUMBER 1 RECORDED JULY 6, 1955 AS DOCUMENT 16291419 IN PLAT BOOK 448 ON PAGES 22 AND 23; THENCE SOUTH 0 DEGREES 30 MINUTES WEST IN THE EAST LINE OF AFORESAID 14TH AVENUE A DISTANCE OF 855.28 FEET TO THE NORTHWEST CORNER OF LOT 1 IN AFORESAID WINSTON PARK UNIT NUMBER 1; THENCE SOUTHEASTERLY IN A NORTHERLY LINE OF AFORESAID WINSTON PARK UNIT NUMBER 1, BEING A CURVED LINE, CONVEX SOUTHWESTERLY, HAVING A RADIUS OF 1130.0 FEET, AN ARC DISTANCE OF 528.87 FEET TO A POINT OF TANGENCY WITH A LINE PARALLEL TO AND 1643.0 FEET NORTH OF THE SOUTH LINE OF THE AFORESAID NORTHEAST 1/4, AND BEING THE NORTH LINE OF AFORESAID WINSTON PARK UNIT NUMBER 1; THENCE EAST IN AFORESAID NORTH LINE OF UNIT NUMBER 1 A DISTANCE OF 700.01 FEET TO A POINT OF CURVE; THENCE SOUTHEASTERLY IN A NORTHEASTERLY CURVED LINE OF AFORESAID UNIT NUMBER 1, CONVEX NORTHEASTERLY HAVING A RADIUS OF 520.0 FEET, AN ARC DISTANCE OF 493.51 FEET, TO THE NORTHEASTERLY CORNER OF LOT 26 IN AFORESAID WINSTON PARK UNIT NUMBER 1; THENCE NORTH 0 DEGREES 09 MINUTES EAST IN THE WEST LINE OF AFORESAID 9TH AVENUE A DISTANCE OF 1185.44 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Property Address:

1254 Winston Plaza
Melrose Park, IL 60160

PINs:

No. 15-03-211-004-0000
No. 15-03-211-006-0000
No. 15-03-211-007-0000
No. 15-03-211-008-0000
No. 15-03-211-009-0000