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2012-007366

Klamath County, Oregon



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07/05/2012 03:01:02 PM

Fee: \$77.00

After recording, return to:
MICHAELS STORES, INC.
8000 Bent Branch Drive
Irving, Texas 75063
ATTN: Real Estate Attorney
Store No. 879/

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

STATE OF OREGON

COUNTY OF KLAMATH

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**") is made and entered into this 23rd day of April, 2012, by and between TRV Properties, LLC, an Oregon limited liability company and Argo K Falls, LLC, an Oregon limited liability company (collectively "**Landlord**"); Mechanics Bank, a California Banking corporation ("**Lender**"); and MICHAELS STORES, INC., a Delaware corporation ("**Tenant**").

WITNESSETH:

WHEREAS, Tenant entered into that certain Shopping Center Lease dated January 10, 2008 (together with all amendments and modifications thereto, the "**Lease**"), with Evergreen Environmental Development Corporation, a Washington corporation ("**Landlord's predecessor**") for retail premises ("**Premises**") in Klamath Falls Town Center (the "**Shopping Center**"), constructed on that certain tract or parcel of land in the City of Klamath Falls, County of Klamath, State of Oregon, more particularly described in Exhibit A attached to this Agreement and incorporated herein by reference; and

WHEREAS, Landlord has assigned or will assign to Lender and Lender's successors and assigns, Landlord's interest in, to and under the Lease as a portion of the collateral security for a loan in the amount of \$9,710,000.00 made or to be made by Lender to Landlord and to be additionally secured by a first lien mortgage or deed of trust, including any amendments and modifications thereto (collectively the "**Mortgage**"); and

WHEREAS, Tenant desires to be assured of the continued use and occupancy of the Premises under the terms and conditions of the Lease.

NOW THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the undersigned parties hereby agree as follows:

1. Subject to the terms of this Agreement, Tenant does hereby consent to the subordination of the Lease and Tenant's rights thereunder to the lien of the Mortgage. Lender agrees that so long as the Lease shall be in full force and effect, and so long as Tenant is not in default, after receipt of any written notice required to be given under the Lease and the expiration of any

applicable grace and/or curative period thereunder, in the performance of any of the terms of the Lease, (a) Tenant shall not be named or joined as a party or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bond or note or other obligation secured thereby; (b) the possession by Tenant of the Premises and Tenant's rights thereto shall not be disturbed, affected, impaired by or interfered with, by (i) any suit, action or proceeding brought upon the Mortgage or the bond or note or other obligation secured thereby, or for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Premises or the Shopping Center, or any deed given in lieu of foreclosure, or by the exercise of any other rights given to any holder of the Mortgage or other documents as a matter of law, or (ii) any default under the Mortgage or the bond or note or other obligation secured thereby; and (c) all condemnation awards and insurance proceeds paid or payable with respect to the Premises or any other part of the Shopping Center shall be applied and paid in the manner set forth in the Lease.

2. In the event of a foreclosure sale under the Mortgage or deed in lieu thereof, Tenant will be bound to Lender or to any purchaser at foreclosure or recipient of a deed in lieu of foreclosure (collectively, "**Purchaser**") under all of the terms of the Lease for the balance of the term thereof remaining, including any extensions or renewals thereof elected by Tenant with the same force and effect as if Lender or Purchaser were Landlord under the Lease, and Tenant hereby attorns to Lender or Purchaser as "landlord" under the Lease, such attornment to be effective and self-operative without the execution of any further instrument. Notwithstanding anything to the contrary contained in this Paragraph 2, Tenant will be under no obligation to pay rent to Lender or Purchaser until Tenant receives written notice from Lender or Purchaser that Lender and/or such other party has succeeded to the interest of "landlord" under the Lease. The respective rights and obligations of Tenant and Lender or Purchaser upon such attornment will, to the extent of the then remaining balance of the term of the Lease, including, any extensions or renewals thereof elected by Tenant, be the same as now set forth therein, it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length herein.

3. In the event that there is a foreclosure for any reason, Lender or Purchaser will be bound to Tenant under all the terms of the Lease and Tenant will, from and after such event, have the same remedies against Lender or Purchaser for the breach of any covenant contained in the Lease that Tenant might have had under the Lease against Landlord.

4. 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 or are to be assigned to Lender as security for the obligations secured by the Mortgage. If Lender notifies Tenant of the occurrence of an event of default under the Mortgage and demands that Tenant pay sums due under the Lease directly to Lender, Tenant shall honor that demand and pay such 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 and Lender agree 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 4 to the same extent as if such rents were paid directly to Landlord.

5. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement will inure to the benefit of and be binding upon the parties hereto, their successors and assigns, and any purchaser or purchasers at foreclosure of the Shopping Center and their respective heirs, personal representatives, successors and assigns.

6. This Agreement will be governed by and construed in accordance with the laws of the State of Oregon.

7. The effective date of this Agreement will be the date of execution by the last party to sign this Agreement provided a fully executed original counterpart of this Agreement is thereafter delivered to all other parties to this Agreement.

8. IN THE EVENT A FULLY EXECUTED ORIGINAL COUNTERPART OF THIS AGREEMENT IS NOT PROVIDED TO TENANT WITHIN NINETY (90) DAYS OF THE DATE OF EXECUTION BY TENANT AS SHOWN BELOW, THIS AGREEMENT SHALL SELF-OPERATIVELY BECOME NULL AND VOID.

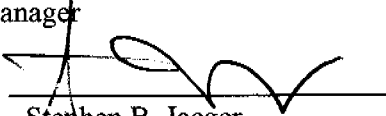
*Remainder of page left intentionally blank;
Signatures following on the next page*

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

LANDLORD:

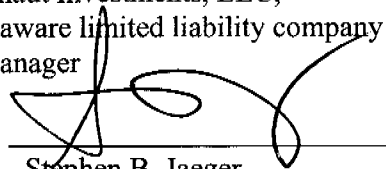
TRV PROPERTIES, LLC,
an Oregon limited liability company,

By: Argonaut Investments, LLC,
a Delaware limited liability company (with respect to Series 10)
Its Manager

By: 
Stephen B. Jaeger
Manager


ARGO KFALLS, LLC,
an Oregon limited liability company

By: Argonaut Investments, LLC,
a Delaware limited liability company (with respect to Series 10)
Its Manager

By: 
Stephen B. Jaeger
Manager

LENDER:

Mechanics Bank

By: 
Name: Aaron Nissim
Title: Vice President

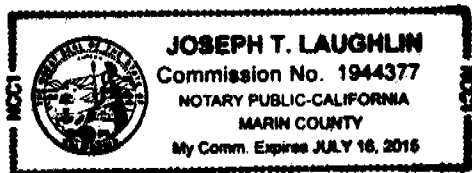
STATE OF CALIFORNIA

COUNTY OF MARIN

On MAY 25, 2012 before me, JOSEPH T. LAUGHLIN, NOTARY PUBLIC,
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared STEPHEN B. JAEGER
NAME(S) OF SIGNER(S)

☒ personally known to me - or - ☐



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.

WITNESS my hand and official seal.

Joseph T. Laughlin
SIGNATURE OF NOTARY

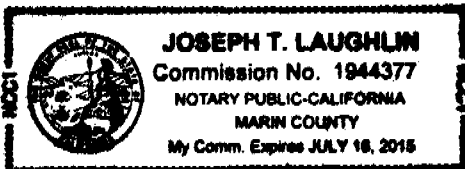
STATE OF CALIFORNIA

COUNTY OF MARIN

On MAY 25, 2012 before me, JOSEPH T. LAUGHLIN, NOTARY PUBLIC,
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared STEPHEN B. JAEGER
NAME(S) OF SIGNER(S)

☒ personally known to me - or - ☐ 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.



WITNESS my hand and official seal.

Joseph T. Laughlin
SIGNATURE OF NOTARY

TENANT:

MICHAELS STORES, INC.,
a Delaware corporation

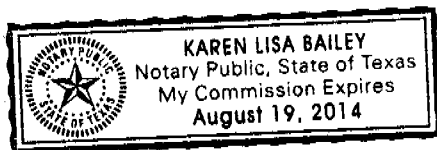
By: *Lance Weibye*
Name: Lance Weibye
Title: Vice President-Real Estate

STATE OF TEXAS

COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared *Lance Weibye - Vice President - Real Estate* of MICHAELS STORES, INC., a Delaware corporation, who acknowledged that she was duly authorized to execute this agreement on behalf of said corporation.

GIVEN under my hand and seal of office this *8th* day of *June*, 20*12*



Karen Bailey
Notary Public in and for the
State of Texas

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of Contra Costa

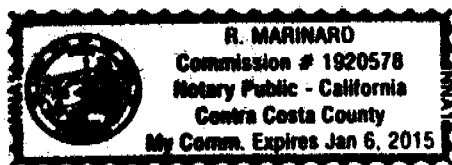
On May 29, 2012 before me, R. Marinaro, Notary Public

Date

Here Insert Name and Title of the Officer

personally appeared Aaron Nissim

Name(s) of Signer(s)



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: R. Marinaro

Place Notary Seal Above

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

EXHIBIT A (LEGAL DESCRIPTION)
TO
SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

**Real property in the County of Klamath, State of Oregon,
described as follows:**

BEGINNING AT THE INITIAL POINT MARKED BY A 5/8" IRON ROD WITH A 1 1/2 " ALUMINUM CAP PER KLAMATH COUNTY SURVEY NO. 1441, RE-MONUMENTED WITH A BRASS SCREW AND WASHER MARKED "W&H PACIFIC", AND LOCATED AT THE INTERSECTION OF THE NORTHEASTERLY RIGHT-OF-WAY LINE OF PERSHING WAY WITH THE WESTERLY RIGHT-OF-WAY LINE OF AUSTIN STREET, SAID INITIAL POINT BEARS NORTH 54°55'34" EAST 1860.10 FEET FROM A FOUND 2 1/2" BRASS CAP IN A MONUMENT BOX MARKING THE ONE-QUARTER CORNER COMMON TO SECTIONS 3 AND 4 OF SAID TOWNSHIP AND RANGE; THENCE NORTH 55°53'18" WEST ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE 880.81 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF AVALON STREET; THENCE NORTH 30°35'30" EAST ALONG SAID EASTERLY LINE 1001.49 FEET; THENCE NORTH 89°51'08" EAST 110.58 FEET; THENCE NORTH 00°10'38" WEST 150.05 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF SHASTA WAY; THENCE NORTH 89°49'57" EAST ALONG SAID SOUTH LINE 376.79 FEET TO SAID WESTERLY RIGHT-OF-WAY LINE; THENCE SOUTH 00°19'16" WEST ALONG SAID WESTERLY LINE 1,122.19 FEET TO AN ANGLE POINT IN SAID RIGHT-OF-WAY LINE; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE SOUTH 34°06'49" WEST 465.41 FEET TO SAID NORTHEASTERLY RIGHT-OF-WAY LINE AND THE INITIAL POINT.

ALSO KNOWN AS LOTS 1 THRU 15 AND COMMON AREAS A AND B OF TRACT 1522 KLAMATH MALL; AND PARCELS 2 AND 3 OF LAND PARTITION 70-07, A REPLAT OF ALL THAT PORTION OF TRACTS 32, 33A AND 36 OF ENTERPRISE TRACTS, SITUATED IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 39 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, CITY OF KLAMATH FALLS, KLAMATH COUNTY, OREGON.

TAX PARCEL NUMBER: R896297 AND R896298 AND R896299 AND R896300 AND R896301 AND R896302 AND R896303 AND R896304 AND R896305 AND R896306 AND R896307 AND R894824 AND R894825 AND R896308 AND R896309 AND R896310 AND R896311 AND R896312 AND R896313