

Return Address:

Land Title Company of Skagit County
111 East George Hopper Road
Burlington, WA 98233



200206060004

Skagit County Auditor

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DOCUMENT TITLE(S) (for transactions contained therein):	
1. Subordination, Non-Disturbance and Attornment Agreement	
2.	
3.	
4.	
Reference Number(s) of Documents assigned or released:	200205030136
(on page__ of document(s))	200203040217
Grantor(s)	
1. Pemcor Holdings (Burlington), LLP	
2.	
3.	
4.	
Additional Names on page of document.	
Grantee(s)	
1. Pemcor Properties (U.S.), Inc.	
2. Pacific Northwest Bank	
3. Michaels Stores, Inc.	
4.	
Additional Names on page of document.	
Legal Description (abbreviated i.e. lot, block, plat or section, township, range)	
Lot 1, records of Skagit County, WA, 7, 34, 4	
Additional legal is on page 8 of document.	
Assessor's Property Tax Parcel/Account Number	
340407-1-002-0500/P24042, 340407-1-002-0609/P24043	
The Auditor/Recorder will rely on information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.	



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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

STATE OF WASHINGTON

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COUNTY OF SKAGIT

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THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into this 24 day of MAY, 2002, by and between PEMCOR HOLDINGS (BURLINGTON) LLP, a Washington limited liability partnership ("Landlord"), successor-in-interest to Permcop Properties (U.S.) Inc.; PACIFIC NORTHWEST BANK ("Lender"); and MICHAELS STORES, INC., a Delaware corporation ("Tenant").

WITNESSETH:

WHEREAS, Tenant entered into that certain Shopping Center Lease dated December 19, 2001, which such Shopping Center Lease and all amendments and modifications thereto are hereinafter referred to as the "Lease"; with Landlord's predecessor for retail premises at 1567 South Burlington Boulevard (the "Premises"), constructed on that certain tract or parcel of land in the City of Burlington, County of Skagit and State of Washington, more particularly described in Exhibit A attached to this Agreement and incorporated herein by reference; and

WHEREAS, Landlord's predecessor assigned all of its rights, title and interest in the Premises to Landlord; 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 \$2,850,000.00 made or to be made by Lender to Landlord and to be additionally secured by a First lien mortgage or deed of trust, which mortgage or deed of trust and all amendments, modifications, renewals, replacements, consolidations and extensions thereof are hereinafter referred to as 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. Tenant does hereby consent to the subordination of the Lease and all of the rights, title and interest of Tenant in and to the Premises thereunder to the lien of the Mortgage, and to all the terms and conditions contained therein; provided, however, that the consent and subordination will be contingent upon and subject to the condition that 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, Tenant's possession of the Premises and Tenant's rights and privileges under the Lease or any extensions or renewals thereof will not be disturbed, diminished or interfered with by Lender or by anyone claiming an interest in the Premises, whether by purchase at foreclosure, deed in lieu of foreclosure or otherwise.

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 herein, 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. Notwithstanding the foregoing, if the Lease is deemed terminated by operation of law as a result of a foreclosure, a lease between Lender or Purchaser and Tenant will be deemed automatically created, with no further instrument required, on the same terms as the Lease except that the term of the replacement lease will be the then unexpired term of the Lease, including Tenant's rights to any renewal options. Lender or Purchaser and Tenant will execute a replacement lease on such terms and conditions at the request of either party.

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, provided, however, Lender or Purchaser shall not be:

- (a) liable for any act or omission of any prior landlord, (including Landlord); provided, however, Tenant may give Lender or Purchaser notice of any event of default which originated prior to, and continues to exist subsequent to, the succession of Lender or Purchaser to the interest of "landlord" under the Lease (a "Continuing Default") and Lender or Purchaser shall have the same obligation to cure any such Continuing Default, and Tenant shall have the same rights and remedies should Lender or Purchaser fail to cure the Continuing Default, as if the Continuing Default had originated subsequent to the succession of Lender or Purchaser to the interest of "landlord" under the Lease; or
- (b) subject to any offsets or defenses which Tenant may be entitled to against any prior Landlord, except those which arose out of Landlord's default and accrued after Tenant had notified the Lender and given Lender an opportunity to cure same. Notwithstanding the foregoing, Lender's or Purchaser's liability for damages as a result of a Continuing Default shall be limited to those damages accruing after (a) Lender's or Purchaser's succession to the interest of "landlord" under the Lease, and (b) the expiration of the notice and cure periods provided under the Lease for the curing of such Continuing Default; or
- (c) bound by any rent or additional rent which Tenant might have paid more than thirty (30) days in advance to any prior landlord, provided, however, Tenant's estimated payments towards its share of Common Area Charges, insurance, Real Estate Taxes 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 Lender or Purchaser the same as if such estimated payments had actually been paid to Lender or Purchaser; or
- (d) responsible for the return of any security deposit which was delivered to Landlord, but which was not subsequently delivered to Lender or Purchaser; or
- (e) bound by any amendment or modification of the Lease made on or after the date hereof without Lender's prior written consent, which shall not be unreasonably withheld; provided, however, Lender shall have the right to withhold its consent in its sole discretion with respect to any amendment or modification that (i) reduces the amount of rent payable under the Lease, or (ii) shortens the term of the Lease. Lender's consent shall be deemed granted if Lender fails to respond to Tenant's written request for consent within thirty (30) days of the date of Tenant's request. Notwithstanding the foregoing, Lender's consent shall not be required in the event the amount of rent payable under the Lease is adjusted by reason of an adjustment in the Leasable Square Feet of the Premises, based upon an architect's certification, as provided in Section 1.2 of Exhibit C to the Lease.

4. If Lender enforces any assignment of rents clause contained in the Mortgage or in any other instrument securing the loan and provides Tenant with written notice directing Tenant to pay all sums directly to Lender, Tenant will comply with such request without regard to any contrary instructions from Landlord and without regard to whether Lender has commenced any foreclosure or other proceedings. Lender and Landlord will hold Tenant harmless from any claims arising out of Tenant's paying rent, as required under the Lease, to Lender or by complying with the assignment of rents clause or similar right.

5. Prior to exercising any rights under the Lease in connection with any failure of Landlord to perform its obligations under the Lease (except in the case of an emergency situation when Tenant shall have all self-help remedies and rights afforded Tenant under the Lease without the necessity of giving Lender written notice, including abatement of rent or additional rent pursuant to the terms of the Lease), Tenant shall give Lender written notice of Landlord's failure, and Lender shall have the right, but not the obligation, to cure such failure within the same number of days as is granted under the Lease for the curing of the default by Landlord (the "Cure Period"). Notwithstanding the foregoing, if the default is of a non-monetary nature and not reasonably susceptible of cure within the Cure Period, and Lender has commenced the cure within the Cure Period and notified Tenant in writing of its commencement, and continues to diligently prosecute such curative action without interruption, then the Cure Period shall be extended until such cure is effectuated as long as Lender continues to diligently prosecute the cure to completion, but in no event shall the Cure Period exceed ninety (90) days. Lender shall notify Tenant within ten (10) business days after receipt of such default notice from Tenant of its election to cure or not cure such Landlord's default. If Lender elects not to cure such Landlord's default, or fails to notify Tenant within said ten business (10) days, or does not cure such Landlord's default within the Cure Period specified hereinabove, then Tenant may without liability to Lender exercise its rights under the Lease relating to such Landlord's default. Nothing in this Paragraph 5 shall be construed to extend Lender additional time to gain possession of the Premises or to foreclose on the Mortgage.

6. Any and all notices required or permitted to be given or served by the terms and provisions of this Agreement shall be in writing and signed by the duly authorized representative of the party giving the notice and shall be deemed duly given when received or refused if (a) sent certified or registered mail, postage prepaid, return receipt requested, or (b) delivered by express overnight delivery, at the addresses set forth below:

LANDLORD:

PEMCOR HOLDINGS (BURLINGTON) LLP
1090 Pender Street
Suite 500
Vancouver, British Columbia
CANADA V6E 2N7



ATTN: Brian H. Paterson

LENDER:

PACIFIC NORTHWEST BANK
Commercial Real Estate Group
275 SE Pioneer Way
Oak Harbor, WA 98277
ATTN: Juanita Terwilliger

TENANT:

MICHAELS STORES, INC.
8000 Bent Branch Drive
Irving, TX 75063
ATTN: Director of Real Estate Administration

Any party hereto may change its address and designate such other parties to receive additional copies of any notice for the above purposes by giving notice as aforesaid stating the change and setting forth the new address.

7. Lender may, at any time, and from time to time, upon not less than thirty (30) days' prior written notice from Lender, request Tenant execute, acknowledge and deliver to Lender, or such party as shall be designated by Lender, a statement in writing and/or certificate in recordable form (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this 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, (ii) acknowledging that there are not, to the certifying party's knowledge, any uncured defaults on the part of the other party hereunder or specifying such defaults, if any are claimed, (iii) setting forth the date of commencement of rents and expiration of the term thereof, and (iv) any other reasonable factual matters as shall be requested by Lender. Lender's estoppel request shall reference this Agreement. Tenant shall execute the estoppel certificate at no cost or expense to the other party for the first request in any twelve (12) calendar month period; provided, however, that for each succeeding request in said twelve (12) calendar month period the executing party may charge the requesting party such reasonable expenses and fees, not to exceed \$500.00, as are appropriate for the review and preparation of the same. Notwithstanding the foregoing, any such estoppel certificate may be relied upon by Lender for estoppel purposes only, and Tenant shall not be liable for damages or other losses as a result of inaccuracy in the information contained in such estoppel certificate.

8. 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.

9. In the event any party hereto institutes any action or proceeding against the other relating to the provisions of this Agreement or any default hereunder, the prevailing party in such action or proceeding will be entitled to recover from the other party reasonable and necessary costs, out of pocket expenses, expert witness fees and attorneys' fees.

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

11. 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. Upon Tenant's receipt of a fully executed original counterpart of the Agreement, the requirement relating to the granting of a non-disturbance agreement as referenced in Section 8.3 of Exhibit C to the Lease shall be satisfied.

12. IN THE EVENT THIS AGREEMENT IS NOT FULLY EXECUTED BY ALL PARTIES HERETO WITHIN FORTY-FIVE (45) DAYS OF THE EARLIEST DATE OF EXECUTION BY ANY PARTY HERETO AS SHOWN BELOW, THIS AGREEMENT SHALL SELF-OPERATIVELY BECOME NULL AND VOID.



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

LANDLORD:

~~PEMCOR PROPERTIES (U.S.), INC.~~
(HOLDINGS (BURLINGTON) LLP
An Oregon corporation A WASHINGTON PARTNERSHIP

By: [Signature]
Name: BRIAN PATERSON
Title: PARTNER

[CORPORATE SEAL]

ATTEST

By: [Signature]
Name: BARBARA MONCRIEF
Title: EXECUTIVE ASSISTANT

LENDER:

PACIFIC-NORTHWEST BANK

By: [Signature]
Name: Tom Roy
Title: Vice President

[CORPORATE SEAL]

ATTEST

By: [Signature]
Name: JANITA M TERWILLIGER
Title: COMMERCIAL LOAN SPECIALIST

TENANT:

MICHAELS STORES, INC.
a Delaware corporation

ATB By: [Signature]
Name: Douglas B. Sullivan
Title: Executive Vice President - Development

[CORPORATE SEAL]

ATTEST:

By: [Signature]
Name: Janet S. Morehouse
Title: Assistant Secretary



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ACKNOWLEDGMENTS

LANDLORD

PROVINCE OF BRITISH COLUMBIA
STATE OF _____ §

COUNTY OF VANCOVER §

On MAY 24, 2002 before me, ALLAN J. COOMBE
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Brian PATENSON
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.

SIGNATURE OF NOTARY

ALLAN J. COOMBE
Barrister and Solicitor
510 - 1040 W. Georgia Street
Vancouver, B.C. V6E 4H1
(604) 443-3652

LENDER

STATE OF WASHINGTON §
COUNTY OF ISLAND §

I certify that I know or have satisfactory evidence that MATT RAY is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the officer/trustee of PACIFIC NORTHWEST BANK be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this day MAY 20, 2002.

JUANITA M. TERWILLIGER
PRINTED NAME OF NOTARY

NOTARY PUBLIC in and for the State of Washington
residing at DALE HARBOUR
My commission expires 5/10/2006

NOTARY PUBLIC
STATE OF WASHINGTON
JUANITA M. TERWILLIGER
My Appointment Expires MAY 10, 2006



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TENANT

STATE OF

COUNTY OF

On 5/14/02 before me,

NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared

Douglas B. Sullivan
Executive Vice President-Development
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.

SIGNATURE OF NOTARY



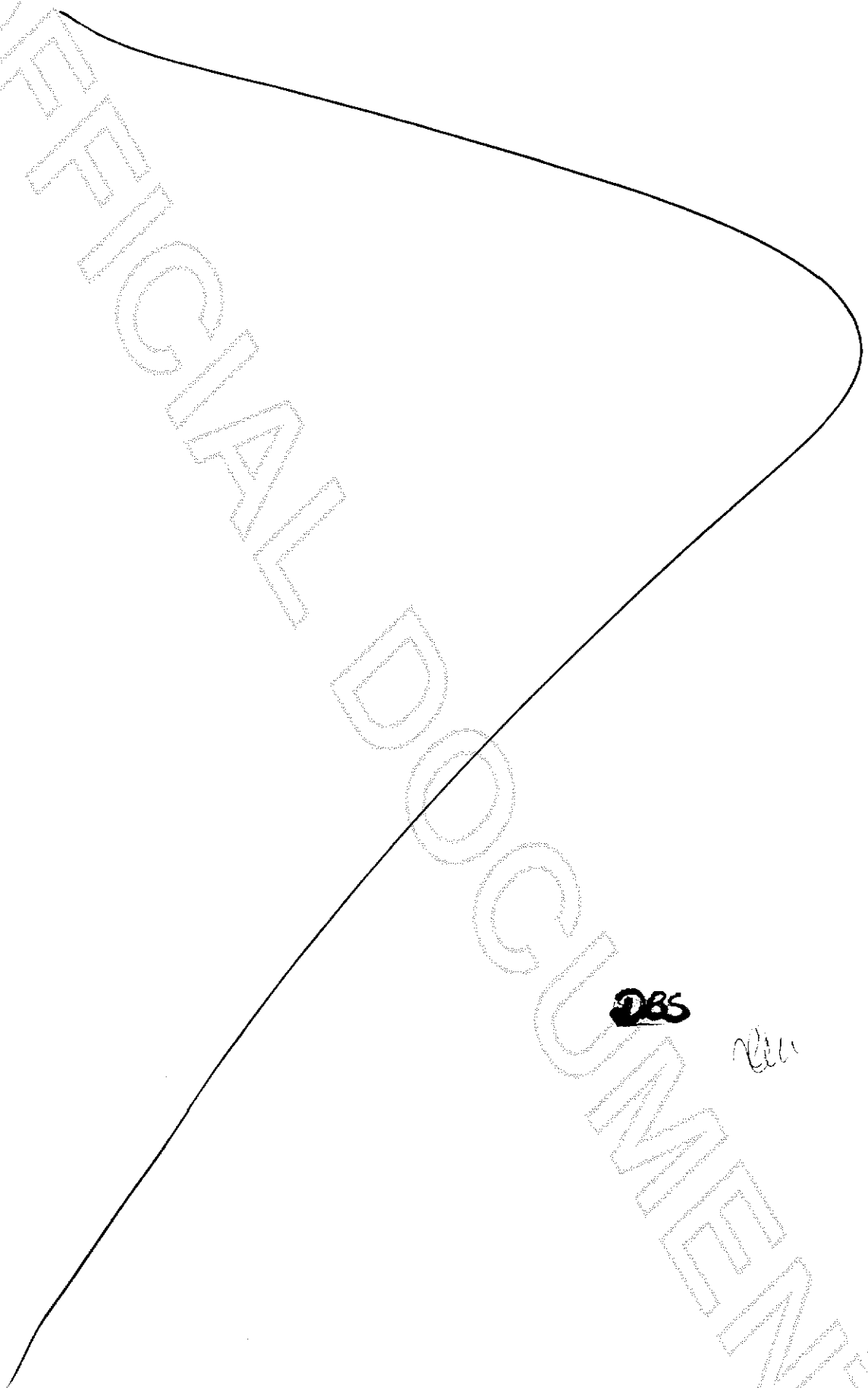
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Exhibit A
Legal Description

Lot 2 of Burlington Short Plat No 1-92 as approved July 18, 1989, and recorded July 27, 1992, in Volume 10 of Short Plats, page 105, under Auditors File No 9207270058, Records of Skagit County, Washington.



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