

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2019 JUN 12 AM 9:31

MICHAEL B. BROWN
RECORDER

RECORDING REQUESTED BY

Ross Dress For Less, Inc.

2019 035196

PREPARED BY AND WHEN RECORDED MAIL TO:

Ross Dress For Less, Inc.
5130 Hacienda Drive
Dublin, CA 94568
Attn: Mike Dail, Esq.
Real Estate Law Department

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

MEMORANDUM OF LEASE

1 APN: 45-07-17-426-005.000-023 and 45-07-17-426-006.000-023.

2

3 1. This Memorandum of Lease is effective upon recordation and is entered into by and
4 between DPM HAMMOND SHOPPING CENTER, LLC, a Delaware limited liability company
5 ("Landlord"), having its principal place of business at 22845 Ventura Blvd., Suite 310, Woodland
6 Hills, CA 91364, and ROSS DRESS FOR LESS, INC., a Virginia corporation ("Tenant"), having its
7 principal place of business at 5130 Hacienda Drive, Dublin, CA 94568-7579, who agree as follows:

8 2. By written lease (the "Lease"), Landlord leases to Tenant and Tenant hires from
9 Landlord a portion of the real property located in the City of Hammond, County of Lake, State of
10 Indiana, described in Exhibit A hereto, for a term of approximately ten (10) years which term is
11 subject to extension by Tenant for four additional periods of five (5) years each. The Exhibit A
12 lands are sometimes herein referred to as the "Landlord's Parcel".

13 3. Landlord has granted Tenant and its authorized representatives and invitees the
14 nonexclusive right to use the Shopping Center common area with others who are entitled to use
15 those areas subject to Landlord's rights as set forth in the Lease.

16 4. The provisions of the Lease are incorporated into this Memorandum of Lease by
17 reference. The Lease contains the following provision(s):

18 "3.2.1. Retail Use.

19 (a) General Rule. Tenant has entered into this Lease in reliance upon
20 representations by Landlord that Landlord's Parcel is and shall remain retail in
21 character, and, further, no part of Landlord's Parcel shall be used for office (except
22 as provided in Section 3.2.1(b)(iii) below) or residential purposes, or as a theater,
23 auditorium, meeting hall, school, church or other place of public assembly, "flea
24 market," mortuary or funeral home, pet store retailer, pet supply store, veterinary
25 services, pet vaccination clinic, overnight stay pet facilities, pet grooming facilities,
26 pet boarding facilities, pet day care facilities, pet adoption facilities, pet training

Store No. 2291, "South Hammond (Combo #5430)"
Interstate Plaza
Hammond, IN
JMD.150

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FINAL

\$25,000

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1 facilities, similar pet facilities (except as provided in Section 3.2.1(b)(i) below), health
2 club/gymnasium, dance hall, billiard or pool hall, massage parlor (except as provided
3 in Section 3.2.1(b)(ii) below), video game arcade, bowling alley, skating rink, car
4 wash, facility for the sale, display, leasing or repair of motor vehicles, night club, on
5 premises consumption of alcoholic beverages (except as incidental to a wine bar
6 located in an upscale beverage store such as BevMo or as incidental to a primarily
7 restaurant use), including any night club, bar, sports bar, or any restaurant where the
8 on premises consumption of alcohol exceeds forty percent (40%) of gross sales (and
9 which shall include Buffalo Wild Wings, Elephant Bar and BJ's Brewhouse regardless
10 of the percentage sale of alcohol, and other similar establishments), facility offering
11 gambling to the public (including any so called Internet café that offers gambling to
12 the public, off track betting facility, casino or gaming facility), provided that the
13 incidental sale of lottery tickets shall be permitted, and the sale of adult products or
14 adult bookstores or adult audio/video products stores (which are defined as stores in
15 which at least ten percent (10%) of the inventory is not available for sale or rental to
16 children under the age of majority in the state in which the Store is located because
17 such inventory explicitly deals with or depicts human sexuality). No ATM or similar
18 machine shall be permitted in Landlord's Parcel within one hundred (100) feet of
19 the front and side perimeter walls of the Store, except if located wholly within the
20 interior of another tenant's or occupant's premises. No tenant or occupant of
21 Landlord's Parcel, other than Tenant, shall be permitted to use one thousand five
22 hundred (1,500) square feet or more of Leasable Floor Area of its premises primarily
23 for the rental or sale of prerecorded audio or video merchandise or electronic games
24 software and technological evolutions thereof. Landlord shall not lease space nor
25 allow space to be occupied in Landlord's Parcel by any occupant other than Tenant,
26 whose use of the space shall be (a) for a store primarily selling merchandise at one
27 price or set prices or a so-called "dollar store" such as 99 Cents store or Family
28 Dollar store, as they are operated as of the Effective Date (except that 99 Cents Only
29 shall be permitted in Landlord's Parcel), and other such types of operations, or (b)
30 for the sale of bridal wear. Further, except within the premises identified on Exhibit
31 B as "Indiana Bureau of Motor Vehicles" (and in no more Leasable Floor Area than
32 exists in such premises as of the Effective Date), no restaurant or other "High
33 Intensity Parking User" (as hereinafter defined) shall be permitted in Landlord's
34 Parcel. A "High Intensity Parking User" is a tenant or occupant whose use requires
35 more than five (5) parking spaces per one thousand (1,000) square feet of Leasable
36 Floor Area and is not otherwise expressly permitted under this Lease. The foregoing
37 use restrictions are referred to herein as the "Ross Prohibited Uses."

38 (b) Exceptions to Retail Use. Notwithstanding the provisions set forth
39 in Section 3.2.1(a) above, the following uses shall be permitted in Landlord's Parcel:

40 (i) Pet Store Retailer. A nationally or regionally recognized pet
41 store (and veterinary services (including vaccination clinics) or overnight-stay pet
42 facilities, pet grooming facilities, pet boarding facilities, pet day care facilities, pet
43 adoption facilities, pet training facilities and similar pet facilities ancillary to such pet
44 store use) shall be permitted in Landlord's Parcel, provided that such pet store

1 retailer is not located within one hundred fifty (150) feet from the front and side
2 perimeter walls of the Store.

3 (ii) Therapeutic Massage. One (1) therapeutic massage facility
4 shall be permitted in Landlord's Parcel, provided that such use is (A) consistent with
5 a first class therapeutic massage retailer, such as, for example, Massage Envy, Hand
6 & Stone, Massage Heights or Happy Feet (B) operating in no more than four
7 thousand (4,000) square feet of Leasable Floor Area, and (C) not located within two
8 hundred (200) feet from the front and side perimeter walls of the Store.

9 (iii) Retail Service Offices. Retail Service Offices, which are
10 defined as offices which cater to the general public and are typically found in
11 shopping centers (expressly including DMV offices), such as banks, insurance agents,
12 travel agents, realtors, stock brokers, and dental or medical offices, shall be permitted
13 in Landlord's Parcel provided that (A) such use shall only be permitted within the
14 premises identified on Exhibit B as "Indiana Bureau of Motor Vehicles" and in no
15 more Leasable Floor Area than exists in such premises as of the Effective Date.

16 (iv) Self-Storage. Notwithstanding anything contained in this
17 Lease to the contrary, climate controlled self-storage shall be permitted in Landlord's
18 Parcel; provided that (A) such use shall only be permitted within the premises
19 identified on Exhibit B as "Indiana Bureau of Motor Vehicles" and in no more
20 Leasable Floor Area than exists in such premises as of the Effective Date.

21 (v) Existing Tenants. The Ross Prohibited Uses set forth in
22 Section 3.2.1(a) are subject to the rights of the Existing Tenants listed on Exhibit K
23 who, in accordance with the terms of existing leases or occupancy agreements in
24 effect on the Effective Date cannot be prohibited from so operating, for the balance
25 of the term(s) of such existing lease(s) or occupancy agreement(s) ("Existing
26 Tenants"), as such leases may be extended or renewed, or replacements of the
27 Existing Tenants with the same use and within the current location of the Existing
28 Tenants. Landlord covenants and agrees that if Landlord has the right to consent
29 to a change in use of the premises occupied by any such Existing Tenants, Landlord
30 shall not consent to a change in use which violates the Ross Prohibited Uses set
31 forth in Section 3.2.1(a)."

32 "15.3 Protection.

33 Without the prior written consent of Tenant, which consent may be withheld
34 in the absolute and sole discretion of Tenant, no tenant or occupant of Landlord's
35 Parcel (other than Tenant) may use, and Landlord, if it has the capacity to do so,
36 shall not permit any other tenant or occupant of Landlord's Parcel to use its
37 premises for the Off Price Sale (as hereinafter defined) of merchandise. For
38 purposes of this Section 15.3, "Off Price Sale" shall mean the retail sale of
39 merchandise on an everyday basis at prices reduced from those charged by full price
40 retailers, such as full price department stores; provided, however, this definition shall
41 not prohibit sales events by a retailer at a price discounted from that retailer's
42 everyday price.' (As of the Effective Date, examples of Off Price Sale retailers

1 include such retailers as T.J. Maxx, Marshalls, HomeGoods, Sierra Trading Post,
2 Homesense, Fallas Paredes, Nordstrom Rack, Factory 2U, Burlington Coat,
3 Steinmart, Filene's Basement, Gordmans, Gabes, and Beall's Outlet.)”

4 In addition to the provisions referred to above, the Lease contains numerous other terms,
5 covenants and conditions which affect not only the Store but also the Shopping Center, including,
6 but not limited to, the Article 2 – Site Plan definition and Section 3.6 of the Lease which, among
7 other things, include building height restrictions, restrictions on changes to the Control Area
8 (defined in the Lease and identified on the Site Plan) and changes to the Common Areas (defined in
9 the Lease and identified on the Site Plan), restrictions on construction of buildings, except within the
10 Building Envelopes (defined in the Lease and identified on the Site Plan), subject to size limitations
11 within the Building Envelopes, and restrictions on changes to building storefronts and exteriors.
12 Notice is hereby given that reference should be made to the Lease with respect to the details of such
13 terms, covenants and conditions.

14 5. The terms, conditions, restrictions and covenants in the Lease, including the
15 provisions of the Lease to be performed by Landlord whether to be performed at the Tenant's store,
16 or any other portion of the Shopping Center, whether affirmative or negative in nature shall run
17 with the real property comprising the Shopping Center and shall inure to the benefit of and be
18 binding upon the parties hereto and the heirs, executors, administrators, successors, assigns and
19 other successors in interest to the parties hereto.

20 6. This Memorandum of Lease is prepared for the purpose of constructive notice and
21 in no way modifies the provisions of the Lease.

22 *[REMAINDER OF PAGE INTENTIONALLY BLANK]*
23

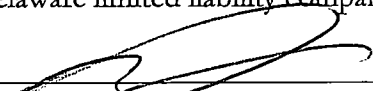
1 Contents of Memorandum of Lease:

Paragraphs 1-6
Exhibit A - Legal Description of Landlord's Parcel
Exhibit B - Site Plan

2 IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Memorandum of Lease
3 on the respective dates shown below.

LANDLORD:
DPM HAMMOND SHOPPING CENTER, LLC,
a Delaware limited liability company

By: DealPoint Merrill, LLC,
a Delaware limited liability company

By: 
David Frank, CEO

By: 
Sterling McGregor

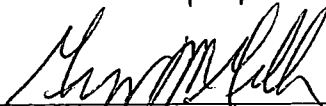
Its: MANAGEN

Dated: 03.18.19

TENANT:
ROSS DRESS FOR LESS, INC.,
a Virginia corporation

By: 
James Fassio
Its: President and Chief Development Officer

Dated: 3/4/2019

By: 
Gregg McGillis
Its: Group Senior Vice President, Property Development

Dated: 3/4/2019

4

TENANT ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

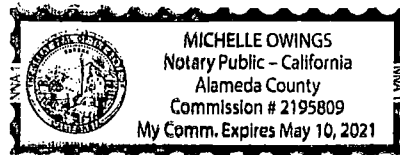
State of California)
County of Alameda)

On March 4, 2019 before me, Michelle Owings, a Notary Public, personally appeared James Fassio and Gregg McGillis, 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.

Michelle Owings
Notary Public



1 LANDLORD ACKNOWLEDGMENT

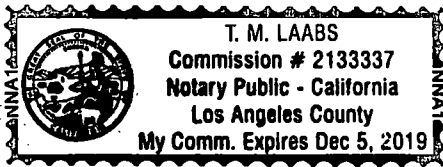
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

2 State of CA)
County of Los Angeles)

3
4 On MARCH 18, 2019 before me, T.M. LAABS, a Notary Public,
5 personally appeared DAVID FRANK, who proved to me on the basis
6 of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
7 instrument and acknowledged to me that he/she/they executed the same in his/her/their
8 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
9 the entity upon behalf of which the person(s) acted, executed the instrument.
10

11 I certify under PENALTY OF PERJURY under the laws of the State of California that the
12 foregoing paragraph is true and correct.
13

14 WITNESS my hand and official seal.
15
16



17 T.M. Laabs
Notary Public

1 LANDLORD ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

2 State of CA)
County of Los Angeles)

3
4
5 On MARCH 18, 2019 before me, T. M. LAABS, a Notary Public,
6 personally appeared STERLING MCGREGOR, who proved to me on the basis
7 of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
8 instrument and acknowledged to me that he/she/they executed the same in his/her/their
9 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
10 the entity upon behalf of which the person(s) acted, executed the instrument.

11
12 I certify under PENALTY OF PERJURY under the laws of the State of California that the
13 foregoing paragraph is true and correct.

14
15 WITNESS my hand and official seal.

16

Notary Public

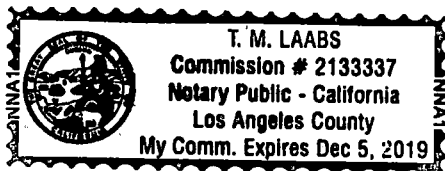


EXHIBIT A

LEGAL DESCRIPTION OF LANDLORD'S PARCEL

The Land referred to herein below is situated in the County of Lake, State of Indiana, and is described as follows:

PARCEL I

LOT 1 AND OUTLOT A IN GATEWAY PROMENADE FIRST ADDITION TO THE CITY OF HAMMOND, BEING A SUBDIVISION OF THE SOUTHEAST 1/4 OF SECTION 17, TOWNSHIP 36 NORTH, RANGE 9 WEST OF THE SECOND PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 30, 2009 AS DOCUMENT 2009-020214, IN LAKE COUNTY, INDIANA.

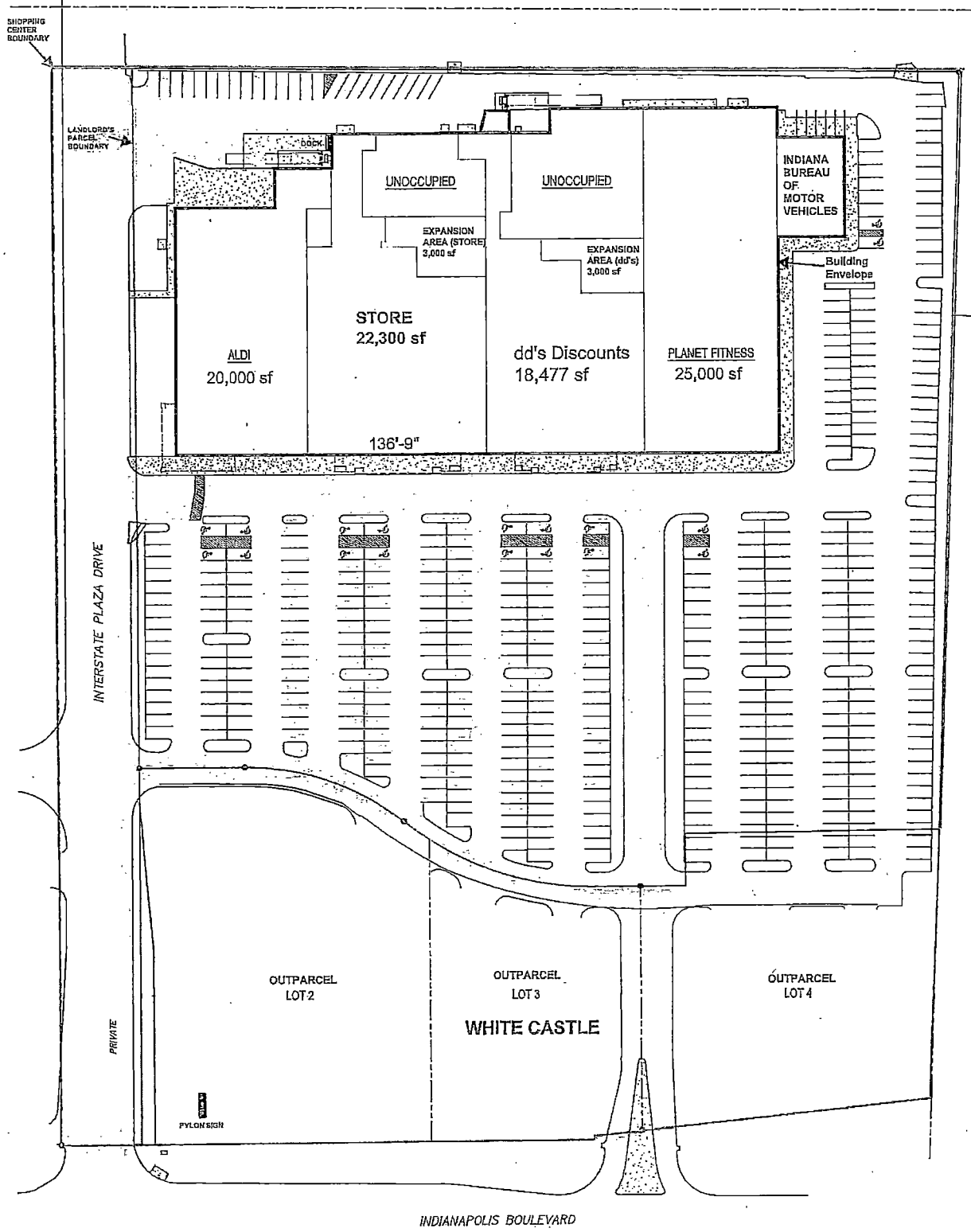
PARCEL II

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL I CREATED BY DEED RECORDED AUGUST 10, 1967 AS DOCUMENT 717141 FOR INGRESS AND EGRESS OVER AND ACROSS THAT PART OF THE SOUTHEAST 1/4 OF SECTION 17, TOWNSHIP 36 NORTH, RANGE 9 WEST OF THE SECOND PRINCIPAL MERIDIAN, IN HAMMOND, DESCRIBED AS FOLLOWS: COMMENCING ON THE EAST LINE OF INDIANAPOLIS BLVD. 913.10 FEET NORTHWESTERLY OF THE THREAD OF THE STREAM OF THE LITTLE CALUMET RIVER LOCATED AND DESCRIBED IN DOCUMENT NO. 481268 RECORDED MAY 13, 1963 AS MEASURED ALONG SAID EAST LINES SAID EAST LINES HAVING A BEARING OF NORTH 35 DEGREES 12 MINUTES 30 SECONDS WEST AND NORTH 37 DEGREES 21 MINUTES WEST; THENCE NORTH 37 DEGREES 21 MINUTES WEST ALONG SAID EAST LINE 60 FEET THENCE NORTH 52 DEGREES 38 MINUTES EAST 800 FEET; THENCE SOUTH 36 DEGREES 28 MINUTES 59 SECONDS EAST 60 FEET; THENCE SOUTH 52 DEGREES 39 MINUTES WEST 800 FEET TO THE PLACE OF BEGINNING, IN LAKE COUNTY, INDIANA.

PARCEL III

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL I FOR INGRESS AND EGRESS AS CREATED BY DECLARATION OF COVENANTS, RECIPROCAL EASEMENTS AND OPERATING AGREEMENT RECORDED MAY 11, 2009 AS DOCUMENT 2009031086.

CONTROL AREA — 



GATEWAY PROMENADE SITE PLAN
2/8/19

#2291 - SOUTH HAMMOND, INDIANA EXHIBIT B