

RECORDING REQUESTED BY:

Ross Dress For Less, Inc.

PREPARED BY AND WHEN RECORDED MAIL TO:

Ross Dress For Less, Inc.
5130 Hacienda Drive
Dublin, CA 94568-7579
Attn.: Mike Dail, Esq.
Real Estate Law Department

2019 035330

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2019 JUN 12 AM 10:27

MICHAEL B. BROWN
RECORDER

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

LOCATION: HAMMOND, INDIANA

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

2
3 This Subordination, Nondisturbance and Attornment Agreement (the "Agreement") is effective as of this
4 4 day of March, 2019, by and between BENEFIT STREET PARTNERS REALTY OPERATING
5 PARTNERSHIP, L.P., a Delaware limited partnership (together with its any of its successors and/or assigns
6 any servicer, "Lender"), ROSS DRESS FOR LESS, INC., a Virginia corporation (the "Tenant") and DPM
7 HAMMOND SHOPPING CENTER, LLC, a Delaware limited liability company (the "Landlord").

RECITALS

8
9 A. Lender is the holder of indebtedness secured by a lien or liens upon, the real property
10 described in Exhibit "A" attached hereto and by this reference incorporated herein. The Exhibit "A"
11 property and improvements thereon is hereinafter referred to as the "Shopping Center." The instruments
12 creating such lien or liens whether they be denominated as being "mortgage," "deed of trust," "deed to
13 secure debt," "security agreement," "vendor's lien," "ground lease," or otherwise, and any instruments
14 modifying or amending the same, or entered into in substitution or replacement thereof, are hereinafter
15 collectively referred to as being the "Mortgage," recorded in the Official Records of Lake County as
16 Document No. _____.

17 B. Tenant has executed, or will execute, a certain lease with Landlord, dated for reference
18 purposes on March 4, 2019, for all or a portion of the Shopping Center, which portion (the "Premises")
19 is more particularly set forth in said lease. Said lease and all amendments and modifications thereto are
20 herein collectively referred to as the "Lease."

21 C. Tenant has requested that Lender agree not to disturb Tenant's possessory rights under the
22 Lease in the event that Lender should foreclose on the Mortgage, provided that Tenant is not in default of
23 the Lease.

24 D. The parties desire to establish certain rights and obligations with respect to their respective
25 interests by means of this Agreement.

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Ch. 1402172914
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1 **AGREEMENTS**

2 NOW, THEREFORE, the parties hereto in consideration of the mutual covenants herein
3 contained, and intending to be legally bound by hereby agree as follows:

4 1. Subject to the terms and conditions of this Agreement, and for so long as this Agreement
5 remains binding upon Lender, the Lease shall be, in accordance with the terms and conditions hereof,
6 subordinate to the lien of the Mortgage and all voluntary and involuntary advances made thereunder.

7 2. Lender approves of the Lease.

8 3. Provided that Tenant is not in default so as to permit the Landlord to terminate the Lease or
9 Tenant's right to possession of the Premises, Lender or the purchaser at a foreclosure sale pursuant to any
10 action or proceeding to foreclose the Mortgage, whether judicial or non-judicial, or Lender pursuant to
11 acceptance of a deed in lieu of foreclosure or any assignment of Landlord's interest under the Lease, in the
12 exercise of any of the rights arising, or which may arise, out of the Mortgage or in any other manner:
13 (i) shall not disturb or deprive Tenant in or of its use, quiet enjoyment and possession (or its right to use,
14 quiet enjoyment and possession) of the Premises, or of any part thereof, or any right, benefit or privilege
15 granted to or inuring to the benefit of Tenant under the Lease (including any right of renewal or extension
16 thereof); (ii) shall not terminate or affect the Lease; (iii) shall recognize Tenant's rights, benefits and
17 privileges under the Lease; and, (iv) shall recognize the leasehold estate of Tenant under all of the terms,
18 covenants, and conditions of the Lease for the remaining balance of the term of the Lease with the same
19 force and effect as if Lender were the Landlord under the Lease. Lender hereby covenants that any sale by
20 it of the Shopping Center pursuant to the exercise of any rights and remedies under the Mortgage or
21 otherwise, shall be made subject to the Lease and the rights of Tenant thereunder. However, in no event
22 shall Lender be:

23 (a) Liable for any act or omission of Landlord arising prior to the date Lender takes
24 possession of Landlord's interest in the Lease or becomes a mortgagee in possession, except to the extent
25 such act or omission is of a continuing nature, such as, for example, a repair obligation;

26 (b) Liable for any offsets or deficiencies which the Tenant might be entitled to assert
27 against the Landlord arising prior to the date Lender takes possession of Landlord's interest in the Lease or
28 becomes a mortgagee in possession, except to the extent that Lender has received the benefit of the act of
29 the Tenant giving rise to the right of deduction, such as, for example, relief of an obligation that would
30 otherwise have been paid by Lender as Landlord;

31 (c) Bound by any payment of rent or additional rent made by Tenant to Landlord for
32 more than one month in advance, which payment was not required under the terms of the Lease;

33 (d) Bound by any amendment or modification of the Lease executed after the date of
34 this Agreement which: (i) increases Landlord's obligations or reduces Tenant's obligations under the Lease;
35 and, (ii) is made without Lender's prior written consent (except to the extent that the Lease may specifically
36 contemplate any amendment or modification thereof).

37 4. In the event of the termination of the Mortgage by foreclosure, summary proceedings or
38 otherwise, and if Tenant is not in default under the terms and conditions of the Lease so as to permit the
39

1 Landlord thereunder to terminate the Lease, then, and in any such event, Tenant shall not be made a party
2 in the action or proceeding to terminate the Mortgage unless not to do so would be disadvantageous
3 procedurally to Lender, in which case, such joinder of Tenant as a party shall not extinguish or interfere with
4 any rights of Tenant under the Lease, nor shall Tenant be evicted or moved or its possession or right to
5 possession under the terms of the Lease be disturbed or in any way interfered with, and, subject to the
6 provisions of this Agreement, Tenant will attorn to Lender or any other party which obtains title to the
7 Shopping Center pursuant to any remedy provided for by the Mortgage or otherwise, such attornment to be
8 effective and self-operative without the execution of any other instruments on the part of any party, and the
9 Lease shall continue in full force and effect as a direct Lease from Lender or such party to Tenant under all
10 the terms and provisions of the Lease (including any rights to renew or extend the term thereof). In the
11 event of such attornment, Lender shall be deemed to have assumed and shall assume the performance of all
12 of the affirmative covenants of Landlord occurring under the Lease from and after the time Lender
13 becomes Landlord and until such time as such obligations are assumed by a bona fide purchaser.

14 5. Tenant hereby confirms that the Lease is in full force and effect.

15 6. Nothing contained in this Agreement shall be deemed to reduce or abrogate any rights of
16 Tenant to cure any default of the Landlord under the Lease in accordance with and subject to the provisions
17 of the Lease and/or to deduct from rental such amounts which Tenant may be entitled to so deduct under
18 the provisions of the Lease.

19 7. Unless and until Lender or any subsequent purchaser succeeds to the interest of Landlord
20 under the Lease, Landlord shall continue to perform Landlord's obligations and duties under the Lease.

21 8. If Landlord executes and delivers to Lender an Assignment of Leases and Rents conveying
22 the rent under the Lease upon an event of default by Landlord under the Mortgage, after receipt of notice
23 from Lender to Tenant (at the address set forth below) that rents under the Lease should be paid to Lender,
24 Tenant shall thereafter pay to Lender all monies thereafter due to Landlord under the Lease. In such event,
25 Tenant shall be entitled to rely solely upon such notice, and Landlord and Lender hereby indemnify and
26 agree to defend and hold Tenant harmless from and against any and all expenses, losses, claims, damages or
27 liabilities arising out of Tenant's compliance with such notice or performance of the obligations under the
28 Lease by Tenant made in good faith in reliance on and pursuant to such notice. Tenant shall be entitled to
29 full credit under the Lease for any rents paid to Lender in accordance with the provisions hereof. Any
30 dispute between Lender (or any other purchaser) and Landlord as to the existence of a default by Landlord
31 under the provisions of the Mortgage, shall be dealt with and adjusted solely between Lender (or any other
32 purchaser) and Landlord, and Tenant shall not be made a party thereto.

33 9. Intentionally Deleted.

34 10. No modification, amendment, waiver or release of any provision of this Agreement or of
35 any right, obligation, claim or cause of action arising thereunder shall be valid or binding for any purpose
36 whatsoever unless in writing and duly executed by the party against which the same is brought to be
37 asserted.

38 11. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and
39 their respective heirs, legal representatives, successors and assigns, including without limitation, the
40 covenants of Lender herein shall be specifically binding upon any purchaser of the Shopping Center at
41 foreclosure or at a sale under power of sale.

1 12. In the event any one or more of the provisions contained in this Agreement shall for any
2 reason be held to be invalid, illegal or unenforceable in any respect, said provision(s) shall be void and of no
3 further force or effect.

4 13. This Agreement shall be governed and construed according to the laws of the state where
5 the Shopping Center is located.

6 14. Provided that Tenant is not in default under the Lease, Lender shall not institute any
7 litigation naming Tenant as a defendant for the purpose of foreclosing or otherwise terminating Tenant's
8 leasehold interest in the Shopping Center or the Premises unless Tenant is required to be named in such
9 litigation by law, and then only for the purpose of complying with the applicable foreclosure statute and so
10 long as Tenant's failure to defend against any such action shall not result in a waiver of its rights to
11 continued possession under the Lease as set forth in this Agreement. The term "Lender" as used herein
12 shall include any successor-in-interest to the Lender (including a purchaser at foreclosure or sale in lieu
13 thereof).

14 15. To be effective, any notice or other communication given pursuant to this Agreement must
15 be in writing and sent postage paid by United States registered or certified mail with return receipt
16 requested. Rejection or other refusal to accept, or inability to deliver because of changed address of which
17 no notice has been given, will constitute receipt of the notice or other communication. For purposes
18 hereof, Lender's address is:

19 Benefit Street Partners Realty Operating Partnership, L.P.
20 142 West 57th Street, Suite 1201
21 New York, New York 10019
22 Attention: Micah Goodman, General Counsel

23 With a copy to:

24 Nelson Mullins Riley & Scarborough, LLP
25 201 17th Street, Suite 1700
26 Atlanta, Georgia 30363
27 Attention: Rusty A. Fleming, Esq.

28 and Tenant's address is:

29 Ross Dress For Less, Inc.
30 5130 Hacienda Drive
31 Dublin, CA 94568-7579
32 Attention: Real Estate Legal Notice Department

33 and Landlord's address is:

34 DPM Hammond Shopping Center, LLC
35 c/o DealPoint Merrill, LLC
36 22815 Ventura Blvd., Suite 310
37 Woodland Hills, CA 91364
38 Attention: David Frank

1 At any time(s), each party may change its address for the purposes hereof by giving the other
2 party a change of address notice in the manner stated above.

3 16. This Agreement (a) contains the entire understanding of Lender and Tenant regarding
4 matters dealt with herein (any prior written or oral agreements between them as to such matters being
5 superseded hereby), (b) can be modified or waived in whole or in part only by a written instrument signed
6 on behalf of the party against whom enforcement of the modification or waiver is sought, and (c) will bind
7 and inure to the benefit of the parties hereto and their respective successors and assigns.

8 17. In the event of any litigation arising out of the enforcement or interpretation of any of the
9 provisions of this Agreement, the unsuccessful party shall pay to the prevailing party its reasonable
10 attorneys' fees, including costs of suit, discovery and appeal. The "prevailing party" shall be that party who
11 obtains substantially the relief sought in the action.

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1 18. In the event the Lease is terminated as a result of Landlord's bankruptcy or reorganization,
2 whereby Lender obtains fee title to the Shopping Center (or in the case Lender is the ground lessor, retains
3 fee title without the encumbrance of the ground lease), Lender agrees that the Lease shall remain in effect as
4 between Lender (as Landlord) and Tenant, subject to the terms of this Agreement, and, upon Tenant's
5 written request, Lender and Tenant agree to execute a reinstatement agreement documenting that the Lease
6 has been reinstated as between Lender (as Landlord) and Tenant and that the terms and conditions thereof
7 shall be as stated in the Lease, subject to the provisions of this Agreement.

8 IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of the
9 day and year first written above.

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

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

LENDER:
BENEFIT STREET PARTNERS
REALTY OPERATING PARTNERSHIP,
L.P.,
a Delaware limited partnership

By: _____
Name: _____
Its: _____

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: MANAGER

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

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

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

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

By: _____
Name: _____
Its: _____

LENDER:
BENEFIT STREET PARTNERS
REALTY OPERATING PARTNERSHIP,
L.P.,
a Delaware limited partnership

By: _____
Name: Micha Goldman
Its: Authorized Signatory

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.

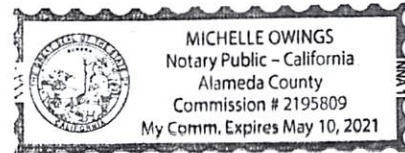
State of California)
County of Alameda)

On March 4, 2019 before me, Michelle Owings, a Notary Public, personally appeared 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



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.

State of CA)
County of Los Angeles)

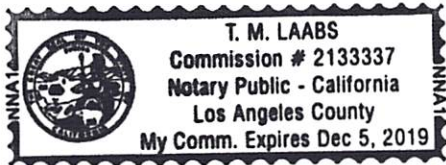
On MARCH 18, 2019 before me, T. M. LAABS, a Notary Public, personally appeared DAVID FRANK, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized 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.

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 STARLING MCBREBOR, who proved to me on the basis of
7 satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and
8 acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that
9 by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
10 person(s) acted, executed the instrument.

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

13
14 WITNESS my hand and official seal.

T.M. Laabs

Notary Public




LENDER ACKNOWLEDGMENT

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State of NY)
)
County of NY)

On 4/24/19 before me, Victoria Kuhne, a Notary Public,
personally appeared MICHAEL GOODMAN, personally known to me or 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.

WITNESS my hand and official seal.



Notary Public

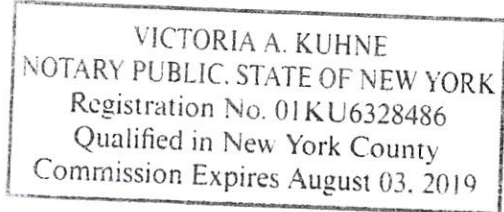


EXHIBIT A

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.

³
I affirm under the penalties of perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law. *Rusty A. Fleming, Esq.*