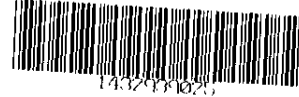


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Doc#: 1432939025 Fee: \$56.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 11/25/2014 09:48 AM Pg: 1 of 10

PREPARED BY AND RECORDING REQUESTED BY:

Ross Dress For Less, Inc.

AND WHEN RECORDED MADE TO:

Ross Dress For Less, Inc.
5130 Hacienda Drive
Dublin, CA 94568-7579

Attn: Mike Dail, Esq.
Real Estate Law Department

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

LOCATION: BERWYN, ILLINOIS

1 Assessor's Parcel Number/PIN: 16-30-100-012-000; 16-30-100-015-000; 16-30-100-016-000; 16-30-
2 100-017-000; and 16-30-100-018-000.

3 This Subordination, Nondisturbance and Attornment Agreement (the "Agreement")
4 is effective as of this 6th day of August October, 2014, by
5 and between **RELIASTAR LIFE INSURANCE COMPANY**, a Minnesota corporation (the
6 "Lender"), **ROSS DRESS FOR LESS, INC.**, a Virginia corporation (the "Tenant") and
7 **CERMAK PLAZA ASSOCIATES, LLC**, a Delaware limited liability company (the "Landlord").

8 RECITALS

9 A. Lender is or will be the holder of indebtedness secured by a lien or liens upon, the
10 real property described in Exhibit "A" attached hereto and by this reference incorporated herein.
11 The Exhibit "A" property and improvements thereon is hereinafter referred to as the "Shopping
12 Center." The instruments creating such lien or liens whether they be denominated as being

Store No. 1812, "Berwyn"
Cermak Plaza
Berwyn, IL
JMD.045

SNDA
Page 1 of 9

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"mortgage," "deed of trust," "deed to secure debt," "security agreement," "vendor's lien," "ground lease," or otherwise, and any instruments modifying or amending the same, or entered into in substitution or replacement thereof, are hereinafter collectively referred to as being the "Mortgage."

B. Tenant has executed, or will execute, a certain lease with Landlord, dated for reference purposes on ~~August 6~~ ^{September 29}, 2014, for all or a portion of the Shopping Center, which portion (the "Premises") is more particularly set forth in said lease. Said lease and all amendments and modifications thereto are herein collectively referred to as the "Lease."

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

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

AGREEMENTS

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

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

2. Lender approves of the Lease.

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

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

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

9 (c) Bound by any payment of rent or additional rent made by Tenant to
10 Landlord for more than one (1) month in advance, which payment was not required under the terms
11 of the Lease.

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

16 4. In the event of the termination of the Mortgage by foreclosure, summary
17 proceedings or otherwise, and if Tenant is not in default under the terms and conditions of the
18 Lease so as to permit Landlord thereunder to terminate the Lease, then, and in any such event,
19 Tenant shall not be made a party in the action or proceeding to terminate the Mortgage unless not
20 to do so would be disadvantageous procedurally to Lender, in which case, such joinder of Tenant as
21 a party shall not extinguish or interfere with any rights of Tenant under the Lease, nor shall Tenant
22 be evicted or moved or its possession or right to possession under the terms of the Lease be
23 disturbed or in any way interfered with, and, subject to the provisions of this Agreement, Tenant will
24 attorn to Lender or any other party which obtains title to the Shopping Center pursuant to any
25 remedy provided for by the Mortgage or otherwise, such attornment to be effective and self-
26 operative without the execution of any other instruments on the part of any party, and the Lease
27 shall continue in full force and effect as a direct Lease from Lender or such party to Tenant under all
28 the terms and provisions of the Lease (including any rights to renew or extend the term thereof). In
29 the event of such attornment, Lender shall be deemed to have assumed and shall assume the
30 performance of all of the affirmative covenants of Landlord occurring under the Lease from and
31 after the time Lender becomes Landlord and until such time as such obligations are assumed by a
32 bona fide purchaser.

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

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

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

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

17 9. Lender shall use the proceeds of any insurance recovery or condemnation award for
18 the purposes stated in the Lease.

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

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

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

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

32 14. Provided that Tenant is not in default under the Lease beyond any applicable notice
33 and cure periods, Lender shall not institute any litigation naming Tenant as a defendant for the
34 purpose of foreclosing or otherwise terminating Tenant's leasehold interest in the Shopping Center
35 or the Premises unless Tenant is required to be named in such litigation by law, and then only for
36 the purpose of complying with the applicable foreclosure statute and so long as Tenant's failure to
37 defend against any such action shall not result in a waiver of its rights to continued possession under

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1 the Lease as set forth in this Agreement. The term "Lender" as used herein shall include any
2 successor-in-interest to Lender (including a purchaser at foreclosure or sale in lieu thereof).

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

8 Lender's address is:

9 **VOYA**

RELIASTAR Life Insurance Company
c/o [REDACTED] Investment Management LLC
5780 Powers Ferry Road, NW, Suite 300
Atlanta, Georgia 30327-4349
Attn.: Mortgage Asset Management

13 and Tenant's address is:

Ross Dress For Less, Inc.
5130 Hacienda Drive
Dublin, CA 94568-7579
Attn.: Real Estate Legal Notice Department

17 and Landlord's address is:

Cermak Plaza Associates LLC
c/o Concordia Realty Management, Inc.
10031 West Roosevelt Road, Suite 200
Westchester, Illinois 60154
Attn.: _____

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

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

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


34 18. In the event the Lease is terminated as a result of Landlord's bankruptcy or
35 reorganization, whereby Lender obtains fee title to the Shopping Center (or in the case Lender is the
36 ground lessor, retains fee title without the encumbrance of the ground lease), Lender agrees that the
37 Lease shall remain in effect as between Lender (as Landlord) and Tenant, subject to the terms of this

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1 Agreement, and, upon Tenant's written request, Lender and Tenant agree to execute a reinstatement
2 agreement documenting that the Lease has been reinstated as between Lender (as Landlord) and
3 Tenant and that the terms and conditions thereof shall be as stated in the Lease, subject to the
4 provisions of this Agreement.

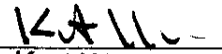

5 **IN WITNESS WHEREOF**, the parties have caused this instrument to be executed
6 as of the day and year first written above.

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


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

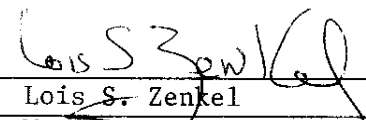
LENDER:
RELIASTAR LIFE INSURANCE COMPANY,
a Minnesota corporation

By: ^{VOYA}  INVESTMENT MANAGEMENT LLC,
a Delaware limited liability company
Its: Authorized Agent

By: 
Name: Kurt Wassenaar
Its: Sr. Vice President 

LANDLORD:
CERMAK PLAZA ASSOCIATES, LLC,
a Delaware limited liability company

By: 
Name: Andrew S. Bennett
Its: Manager

By: 
Name: Lois S. Zenkel
Its: Manager

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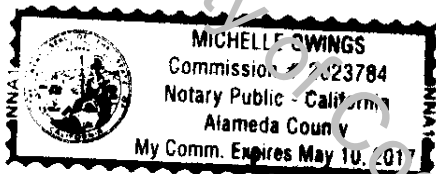
TENANT ACKNOWLEDGMENT

State of California)
)
County of Alameda)

On August 6, 2014, 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 whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 ACKNOWLEDGEMENT

State of California)
) ss.
County of Santa Barbara)

On September 4, 2014 before me, Evelyn Torres, a Notary Public, personally appeared Andrew Bertram, 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]
Notary Public

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LANDLORD ACKNOWLEDGMENT

State of Connecticut)
) ss Greenwich
County of Fairfield)

On September 10, 2014 before me, Pamela C. Newman, a Notary Public, personally appeared Lois S. Zenkel, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the property acted, executed the instrument.

WITNESS my hand and official seal.



Pamela C. Newman
Notary Public
My Commission Expires October 31, 2015

Property of Cook County Clerk's Office



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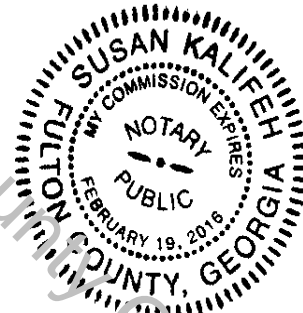
LENDER ACKNOWLEDGMENT

State of Georgia
County of Fulton) ss

On Oct 7, 2014 before me, Susan Kalifeh, a Notary Public, personally appeared Rust Wassenaar, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is/are subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the property acted, executed the instrument.

WITNESS my hand and official seal.

Susan Kalifeh
Notary Public



Property of Cook County Clerk's Office

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SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT EXHIBIT A

LEGAL DESCRIPTION

THAT PART OF LOT 1 (EXCEPT THOSE PARTS FALLING IN STREET) OF THE CIRCUIT COURT PARTITION OF THE WEST PART OF THE NORTHWEST 1/4 AND THE WEST PART OF THE SOUTHWEST 1/4 OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF A STRAIGHT LINE, RUNNING FROM A POINT IN THE EAST LINE OF SOUTH HARLEM AVENUE 1590.99 FEET NORTH OF ITS INTERSECTION WITH THE NORTH LINE OF WEST 26TH STREET TO A POINT IN THE WEST LINE OF SOUTH HOME AVENUE 971.94 FEET SOUTH OF ITS INTERSECTION WITH THE SOUTH LINE OF WEST CERMAK ROAD.

(AND ALSO EXCEPTING THEREFROM ALL THAT PORTION COVEYED TO THE STATE OF ILLINOIS BY WARRANTY DEED RECORDED JULY 28, 1964 <AND 1918042, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST 1/4 CORNER OF SAID SECTION 30, THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 30 A DISTANCE OF 1374.29 FEET TO THE EXTENDED WEST LINE OF HOME AVENUE, AS THE SAME IS NOW LOCATED AND ESTABLISHED, THENCE SOUTH ALONG THE WEST LINE OF HOME AVENUE, AND THE SAME EXTENDED A DISTANCE OF 60 FEET TO A POINT; THENCE WEST IN A STRAIGHT LINE PARALLEL TO AND DISTANT 60 FEET SOUTH, MEASURED AT RIGHT ANGLES FROM SAID NORTH LINE OF SECTION 30, A DISTANCE OF 286.00 FEET TO A POINT; THENCE SOUTH IN A STRAIGHT LINE MEASURED AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE A DISTANCE OF 5.0 FEET TO A POINT; THENCE WEST IN A STRAIGHT LINE PARALLEL TO AND DISTANT 65.0 FEET SOUTH, MEASURED AT RIGHT ANGLES FROM SAID NORTH LINE OF SECTION 30, A DISTANCE OF 972.86 FEET TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY ALONG A CURVED LINE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 65.0 FEET AND A CONTRAL ANGLE OF 90 DEGREES 22 MINUTES 30 SECONDS, A DISTANCE OF 102.51 FEET TO A POINT OF TANGENCY IN THE EAST LINE OF HARLEM AVENUE AS THE SAME IS NOW LOCATED AND ESTABLISHED, DISTANT 50.0 FEET EAST MEASURED AT RIGHT ANGLES FROM THE WEST LINE OF SAID SECTION 30; THENCE WEST IN A STRAIGHT LINE, A DISTANCE OF 50.0 FEET TO A POINT IN THE WEST LINE OF SAID SECTION 30; THENCE NORTH ALONG THE WEST LINE OF SAID SECTION 30 A DISTANCE OF 130.43 FEET TO THE POINT OF BEGINNING, EXCEPTING THAT PART OF THE ABOVE DESCRIBED PREMISES PREVIOUSLY DEDICATED OR NOW USED FOR HARLEM AVENUE AND CERMAK ROAD), ALL IN COOK COUNTY, ILLINOIS.