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1720034087

PREPARED BY AND RECORDING REQUESTED BY:

Ross Dress For Less, Inc.

AND WHEN RECORDED MAIL TO:

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

Doc# 1720034087 Fee \$60.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 07/19/2017 02:09 PM PG: 1 OF 12

APN: _____

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

LOCATION: ARLINGTON HEIGHTS, ILLINOIS

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This Subordination, Nondisturbance and Attornment Agreement (the "Agreement") is effective as of this 1st day of May, 2017, by and between NATIXIS, NEW YORK BRANCH (the "Lender"), ROSS DRESS FOR LESS, INC., a Virginia corporation (the "Tenant") and AMCAP NORTHPOINT II LLC, a Delaware limited liability company (the "Landlord").

RECITALS

A. Lender is, or will be, the holder of indebtedness secured by a lien or liens upon, the real property described in Exhibit "A" attached hereto and by this reference incorporated herein. The Exhibit "A" property and improvements thereon is hereinafter referred to as the "Shopping Center." The instruments creating such lien or liens whether they be denominated as being "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", recorded on _____ as Document No. _____ in the Official Records of _____ County.

B. Tenant has executed that certain lease with Landlord's predecessor-in-interest, dated for reference purposes on November 19, 2010, 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.

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

3 AGREEMENTS

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

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

10 2. Lender approves of the Lease.

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

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

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

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

38 (d) Bound by any amendment or modification of the Lease executed after the
39 date of this Agreement which: (i) increases Landlord's obligations or reduces Tenant's obligations

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1 under the Lease; and, (ii) is made without Lender's prior written consent (except to the extent that
2 the Lease may specifically contemplate any amendment or modification thereof).

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

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

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

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

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

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

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

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

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

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

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

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

28 Natixis, New York Branch
29 1251 Avenue of the Americas
30 New York, NY 10020
31 Attn.: Real Estate Administration

32 and Tenant's address is:

33 Ross Dress For Less, Inc.
34 5130 Hacienda Drive
35 Dublin, CA 94568-7579
36 Attn.: Real Estate Legal Notice Department

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1 and Landlord's address is:

2 AmCap Northpoint II LLC
3 c/o AmCap CCN Manager LLC
4 1281 East Main Street
5 Stamford, CT 06902
6 Attn.: Ricki Singer

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

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

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

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

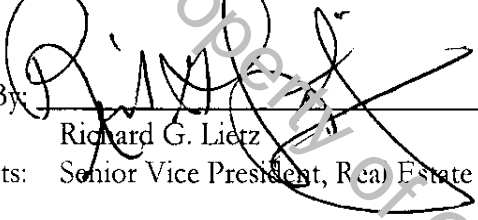
27 [REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]
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 2 19. So long as the Mortgage remains in force and effect, in the event that Tenant delivers
 3 to Landlord a notice of Landlord's default under the Lease, Tenant shall concurrently send a copy of
 4 such notice to Lender at the address and in the manner set forth in paragraph 15. Thereafter,
 5 Lender shall have the right, but not the obligation, to cure any Landlord default within the same
 6 period that Landlord is entitled to cure a default under the Lease.

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

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

By: 
 Richard G. Lietz
 Its: Senior Vice President, Real Estate

LENDER:
NATIXIS, NEW YORK BRANCH,
 a _____

By: _____
 Name: _____
 Its: _____

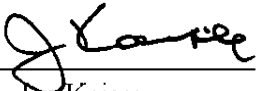
LANDLORD:
AMCAP NORTHPOINT II LLC,
 a Delaware limited liability company

By: PG AmCap JV LLC,
 a Delaware limited liability company
 Its: Sole Member

By: AmCap CCN Manager LLC
 a Delaware limited liability company
 Its: Managing Member

By: AmCap Management LLC
 a Delaware limited liability company
 Its: Managing Member

By: AmCap, Incorporated
 a Connecticut corporation
 Its: Managing Member

By: 
 Name: Jay Kaiser
 Its: Chairman and CEO

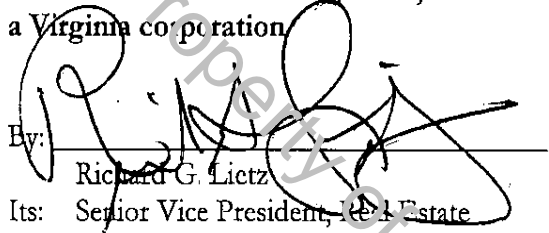
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19. So long as the Mortgage remains in force and effect, in the event that Tenant delivers to Landlord a notice of Landlord's default under the Lease, Tenant shall concurrently send a copy of such notice to Lender at the address and in the manner set forth in paragraph 15. Thereafter, Lender shall have the right, but not the obligation, to cure any Landlord default within the same period that Landlord is entitled to cure a default under the Lease.

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

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

By: 
Richard G. Lietz
Its: Senior Vice President, Real Estate

LENDER:
NATIXIS, NEW YORK BRANCH,
a _____

By: 
Name: BRIAN CLARK
Its: MANAGING DIRECTOR

By: 
Name: Katherine Czech
TITLE: Vice President

LANDLORD:
AMCAP NORTHPOINT II LLC,
a Delaware limited liability company

By: PG AmCap JV LLC,
a Delaware limited liability company
Its: Sole Member

By: AmCap CCN Manager LLC
a Delaware limited liability company
Its: Managing Member

By: AmCap Management LLC
a Delaware limited liability company
Its: Managing Member

By: AmCap, Incorporated
a Connecticut corporation
Its: Managing Member

By: _____
Name: Jay Kaiser
Its: Chairman and CEO

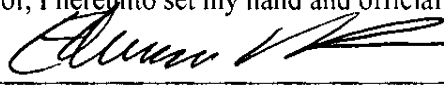
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LENDER ACKNOWLEDGMENT

STATE OF NEW YORK :
 : SS
COUNTY OF NEW YORK :

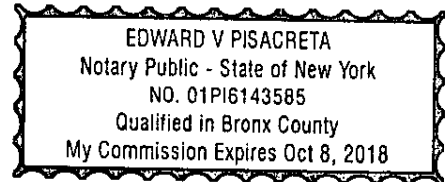
On this, the 15th day of June, 2017, before me a Notary Public in and for the State of New York, the undersigned officer, personally appeared Katherine Czech, who acknowledged herself to be a Vice President of NATIXIS, NEW YORK BRANCH, and that she, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the vice president by herself as such officer.

I certify that I am not an officer or director of the above-named bank, banking institution or trust company. [~~Strike if inapplicable~~] In witness whereof, I hereunto set my hand and official seal.



Notary Public [SEAL]

My Commission Expires:
_____, 20__

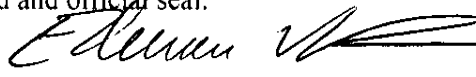


STATE OF NEW YORK :
 : SS
COUNTY OF NEW YORK :

On this, the 15th day of June, 2017, before me a Notary Public in and for the State of New York, the undersigned officer, personally appeared Brian Clark, who acknowledged himself to be a Managing Director of NATIXIS, NEW YORK BRANCH, and that he, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Managing Director by himself as such officer.

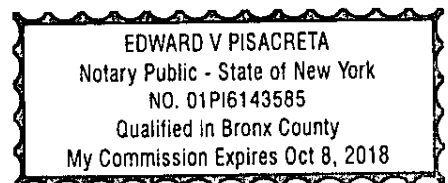
I certify that I am not an officer or director of the above-named bank, banking institution or trust company. [~~Strike if inapplicable~~]

In witness whereof, I hereunto set my hand and official seal.



Notary Public [SEAL]

My Commission Expires:
_____, 20__



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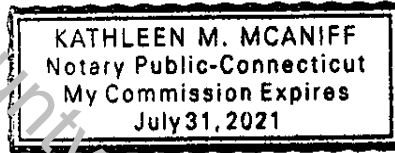
LANDLORD ACKNOWLEDGEMENT

State of Connecticut)
 County of Fairfield) ss.

On June 6, 2017 before me, Kathleen M. McAniff, a Notary Public,
 personally appeared Jay Kaiser,
 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.

Kathleen M. McAniff
 Notary Public



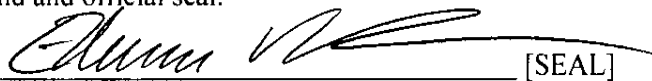
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STATE OF NEW YORK :
 : SS
COUNTY OF NEW YORK :

On this, the 15th day of June, 2017, before me a Notary Public in and for the State of New York, the undersigned officer, personally appeared Brian Clark, who acknowledged himself to be a Managing Director of NATIXIS, NEW YORK BRANCH, and that he, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Managing Director by himself as such officer.

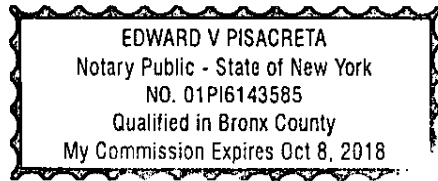
I certify that I am not an officer or director of the above-named bank, banking institution or trust company. [~~Strike if inapplicable~~]

In witness whereof, I hereunto set my hand and official seal.



Notary Public [SEAL]

My Commission Expires:
_____, 20__



Property of Cook County Clerk's Office

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EXHIBIT A

LEGAL DESCRIPTION OF THE SHOPPING CENTER

LOT 1 OF NORTHGATE SHOPPING CENTER SUBDIVISION OF PART OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 17, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, EXCEPT THAT PART DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1 THENCE SOUTHWARD ALONG THE WESTERLY LINE OF SAID LOT 1, BEING THE EASTERLY LINE OF ARLINGTON HEIGHTS ROAD; SOUTH 1 DEGREES, 50 MINUTES, 41 SECONDS EAST, A DISTANCE OF 73.57 FEET; THENCE SOUTH 00 DEGREES, 17 MINUTES, 45 SECONDS EAST, A DISTANCE OF 470.00 FEET; THENCE SOUTH 13 DEGREES, 57 MINUTES, 59 SECONDS EAST, A DISTANCE OF 40.00 FEET; THENCE SOUTH 33 DEGREES, 05 MINUTES, 01 SECONDS EAST, A DISTANCE OF 37.43 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 33 DEGREES, 05 MINUTES, 01 SECONDS EAST, A DISTANCE OF 7.57 FEET, THENCE SOUTHEASTERLY ALONG A LINE BEING 50.00 FEET NORTHEASTERLY OF AND PARALLEL WITH THE CENTER LINE OF RAND ROAD, SOUTH 48 DEGREES, 24 MINUTES, 05 SECONDS EAST A DISTANCE OF 387.47 FEET; THENCE SOUTH 50 DEGREES 47 MINUTES 20 SECONDS EAST A DISTANCE OF 48.01 FEET; THENCE NORTH 48 DEGREES, 24 MINUTES, 05 SECONDS WEST, A DISTANCE OF 444.74 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

202 E. Rand Road + 470 E. Rand Road
Arlington Heights, IL 60004

03-17-301-017, 03-17-301-019, 03-17-301-020

03-17-301-021 and 03-17-301-022