



Doc# 1913412285 Fee \$56.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 05/14/2019 02:53 PM PG: 1 OF 10

RECORDING REQUESTED BY

Ross Dress For Less, Inc.

PREPARED BY AND WHEN RECORDED MAIL TO:

Bartko, Zankel, Bunzel & Miller
One Embarcadero Center, Suite 800
San Francisco, CA 94111
Attn.: Hilda Senseney, Esq.

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

LOCATION: Hillside, IL

APN: 15-17-403-026-0000, 15-17-404-043-0000, 15-17-404-045-0000, 15-17-404-047-0000,
15-17-405-005-0000, 15-17-405-007-0000.

This Subordination, Nondisturbance and Attornment Agreement (the "Agreement") is effective as of this 5 day of February 2019, by and between RGA REINSURANCE COMPANY, a Missouri corporation (the "Lender"), ROSS DRESS FOR LESS, INC., a Virginia corporation (the "Tenant") and SVAP III HILLSIDE TOWN CENTER, 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," 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 in the Official Records of Cook County, Illinois, as Document No. 1828519282.

B. Tenant or Tenant's predecessor in interest has executed, or will execute, a certain lease with Landlord, dated for reference purposes on February 5, 2019, 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."

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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 hereunder.

2. Lender approves of the Lease.

3. Provided that Tenant is not in default so as to permit the 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 the 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:

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

(b) Liable for any offsets or deficiencies which the Tenant might be entitled to assert against the Landlord arising prior to the date Lender takes possession of Landlord's interest in the Lease or becomes a mortgagee in possession, except to the extent that Lender has received the benefit of the act of the Tenant giving rise to the right of

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deduction, such as, for example, relief of an obligation that would otherwise have been paid by Lender as Landlord;

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

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

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

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

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

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

8. If Landlord executes and delivers to Lender an Assignment of Leases and Rents conveying the rent under the Lease upon an event of default by Landlord under the Mortgage, after receipt of notice from Lender to Tenant (at the address set forth below) that rents under the Lease should be paid to Lender, Tenant shall thereafter pay to Lender all monies thereafter due to Landlord under the Lease. In such event, Tenant shall be entitled to

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rely solely upon such notice, and Landlord and Lender hereby indemnify and agree to defend and hold Tenant harmless from and against any and all expenses, losses, claims, damages or liabilities arising out of Tenant's compliance with such notice or performance of the obligations under the Lease by Tenant made in good faith in reliance on and pursuant to such notice. Tenant shall be entitled to full credit under the Lease for any rents paid to Lender in accordance with the provisions hereof. Any dispute between Lender (or any other purchaser) and Landlord as to the existence of a default by Landlord under the provisions of the Mortgage, shall be dealt with and adjusted solely between Lender (or any other purchaser) and Landlord, and Tenant shall not be made a party thereto.

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

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

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

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

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

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

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

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RGA Reinsurance Company
 16600 Swingley Ridge Road
 Chesterfield, Missouri 63017
 Attn.: Mortgage Loan and Real Estate Department

and Tenant's address is:

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

and Landlord's address is:

SVAP III Hillside Town Center, LLC
 c/o Sterling Organization
 340 Royal Poinciana Way, Suite 316
 Palm Beach, FL 33480
 Attn.: Gregory Moross

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

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

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

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

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, if Landlord does not cure the default within the time period set forth in the Lease for a cure of such default ("Landlord's Cure Period"), then Lender shall have the right (but not the obligation) to cure Landlord's default within thirty (30) additional days after

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expiration of the Landlord's Cure Period (such additional thirty (30) day period shall be defined herein as "Lender's Cure Period"), provided Lender notifies Tenant in writing, within five (5) days after expiration of Landlord's Cure Period, that Lender elects to cure such Landlord default ("Lender's Cure Notice") and provided further that Lender commences efforts to cure the Landlord default within five (5) days after expiration of Landlord's Cure Period and thereafter Lender diligently pursues cure of Landlord's default to completion. In the event Lender fails to timely give the Lender's Cure Notice as set forth in this paragraph 19 or Lender gives Tenant the Lender's Cure Notice but Lender fails to cure the Landlord default prior to expiration of the Lender's Cure Period, then Tenant shall have the right to exercise all rights and remedies available under the Lease or at law or in equity.

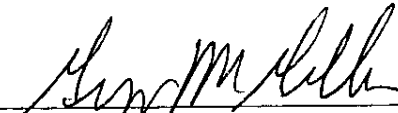
20. Intentionally Deleted.

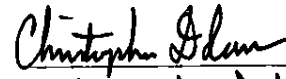
21. Tenant hereby agrees that the execution, acknowledgement and delivery of this Agreement by Tenant, Lender and Landlord shall constitute satisfaction of Section 13.1.1 of the Lease with respect to the Mortgage.

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

LENDER:
RGA REINSURANCE COMPANY,
a Missouri corporation

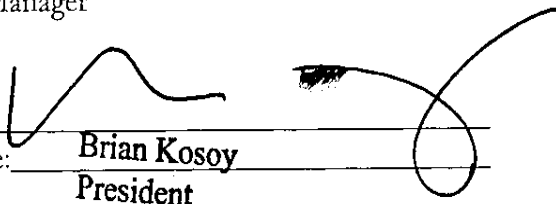
By: 
Name: Gregg McGillis
Its: Group Senior Vice President, Property Development

By: 
Name: Christopher Dolan
Its: VP Portfolio Manager

LANDLORD:
SVAP III HILLSIDE TOWN CENTER,
LLC, a Delaware limited liability company

By: Sterling Value Add Investments TRS III, LLC,
a Delaware limited liability company
Its: Sole Member

By: SVAP III GP, LLC, a Delaware limited
liability company
Its: Manager

By: 
Name: Brian Kosoy
Its: President

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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.

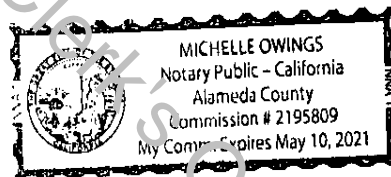
State of California)
)
County of Alameda)

On February 15, 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



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LANDLORD ACKNOWLEDGMENT

State of Florida)

County of Palm Beach)

On 4/17/19 before me, Karen L Lynch, a Notary Public, personally appeared Brian Kosoy, personally known to me, 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.



Karen L Lynch
Notary Public

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LENDER ACKNOWLEDGMENT

State of Missouri)

County of Jefferson)

On April 23, 2019 before me, Kimberley D. Kirkpatrick, a Notary Public, personally appeared Christopher Dolan, 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.

Kimberley D. Kirkpatrick
Notary Public



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EXHIBIT A

LEGAL DESCRIPTION OF THE SHOPPING CENTER

(LANDLORD'S PARCEL)

PARCEL 1:

TRACT 1:

LOTS 2, 3, 5 AND 7 IN METRO COMMONS, BEING A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

TRACT 2:

LOTS 8, AND 10 IN METRO COMMONS RESUBDIVISION, BEING A RESUBDIVISION OF ALL OF LOTS 8 AND 10 AND PART OF LOT 9 IN METRO COMMONS, A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

NON-EXCLUSIVE EASEMENTS FOR INGRESS, EGRESS, PARKING, UTILITIES AND SIGN EASEMENTS GRANTED IN OPERATION AND EASEMENT AGREEMENT DATED DECEMBER 21, 2007, BETWEEN TARGET CORPORATION AND HARRIS, N.A., AS TRUSTEE U/T/A DATED DECEMBER 1, 2001 AND KNOWN AS TRUST NUMBER HTB-1026, FOR HILLSIDE TOWN CENTER, RECORDED JANUARY 2, 2008 AS DOCUMENT NUMBER 0800213028, COOK COUNTY RECORDER OF DEEDS.