

UNOFFICIAL COPY

Doc#: 2000916035 Fee: \$98.00
Edward M. Moody
Cook County Recorder of Deeds
Date: 01/09/2020 10:11 AM Pg: 1 of 12

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
Attn.: Mike Dail, Esq.
Real Estate Law Department

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

LOCATION: CHICAGO, ILLINOIS

2 APNs: _____
3

4 This Subordination, Nondisturbance and Attornment Agreement (the "Agreement") is
5 effective as of this 16 day of September, 2019, by and between JOHN HANCOCK
6 LIFE INSURANCE COMPANY (U.S.A.), a Michigan corporation, its successors and assigns (the
7 "Lender"), ROSS DRESS FOR LESS, INC., a Virginia corporation (the "Tenant") and NEWMARK
8 MERRILL COMPANIES, Inc., a California corporation (the "Landlord").

RECITALS

9
10 A. Lender is the holder of indebtedness secured by a lien or liens upon, the real property
11 described in Exhibit "A" attached hereto and by this reference incorporated herein. The Exhibit "A"
12 property and improvements thereon is hereinafter referred to as the "Shopping Center." The instruments
13 creating such lien or liens whether they be denominated as being "mortgage," "deed of trust," "deed to
14 secure debt," "security agreement," "vendor's lien," "ground lease," or otherwise, and any instruments
15 modifying or amending the same, or entered into in substitution or replacement thereof, are hereinafter
16 collectively referred to as being the "Mortgage," recorded in the Official Records of Cook County as
17 Document No. 1934606135.

18 B. Tenant has executed that certain lease with Landlord's predecessor-in-interest, dated for
19 reference purposes on March 8, 2018, for all or a portion of the Shopping Center, which portion (the
20 "Premises") is more particularly set forth in said lease. Said lease and all amendments and modifications
21 thereto are herein collectively referred to as the "Lease."

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

UNOFFICIAL COPY

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

AGREEMENTS

4 NOW, THEREFORE, the parties hereto in consideration of the mutual covenants herein
5 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 Agreement
7 remains binding upon Lender, the Lease shall be, in accordance with the terms and conditions hereof,
8 subordinate to the lien of the Mortgage and all voluntary and involuntary advances made thereunder.

9 2. Lender approves of the Lease.

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

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

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

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

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

UNOFFICIAL COPY

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

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

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

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

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

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

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

41 11. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and
42 their respective heirs, legal representatives, successors and assigns, including without limitation, the

UNOFFICIAL COPY

1 covenants of Lender herein shall be specifically binding upon any purchaser of the Shopping Center at
 2 foreclosure or at a sale under power of sale.

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

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

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

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

21 John Hancock Life Insurance (U.S.A.)
 22 c/o Real Estate Finance Group
 23 197 Clarendon Street, C-2
 24 Boston, MA 02116
 25 Attention: _____

26 and Tenant's address is:

27 Ross Dress For Less, Inc.
 28 5130 Hacienda Drive
 29 Dublin, CA 94568-7579
 30 Attention: Real Estate Legal Notice Department

31 and Landlord's address is:

32 Newmark Merrill Companies, Inc.
 33 5850 Canoga Avenue, Suite 560
 34 Woodland Hills, CA 91367
 35 Attention: Shirley Seal

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

UNOFFICIAL COPY

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

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

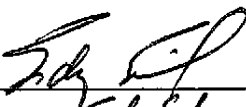
TENANT:
ROSS DRESS FOR LESS, INC.,
 a Virginia corporation

LENDER:
JOHN HANCOCK LIFE INSURANCE
COMPANY (U.S.A.),
 a Michigan corporation

By: 
 Jeff Sealy
 Its: Group Vice President, Real Estate

By: _____
 Name: _____
 Its: _____

LANDLORD:
NEWMARK MERRILL COMPANIES, INC.,
 a California corporation

By: 
 Name: Bob El
 Its: ms

8
 9

Property of Cook County Clerk's Office

UNOFFICIAL COPY

LANDLORD'S ACKNOWLEDGMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

State of _____)

County of _____)

On _____ before me, _____, a Notary Public,
personally appeared _____, 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.

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.

SEE ATTACHED CERTIFICATE
9/11/2019
[Signature]

Notary Public

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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 the document.

State of California
County of Los Angeles

On 9/11/2019 before me, Robert D. Chappell, Notary Public, personally appeared
Date

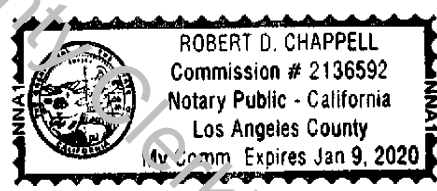
Sanford D. Sigal, who proved to me on the basis of
Name(s) of Signer(s)

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.

Signature: Robert D. Chappell



Title or Type of Document: Subordination, Non-Disturbance and Attornment Agreement

Document Date: _____ Number of Pages: _____

UNOFFICIAL COPY

COLLATERAL AGENT:
JOHN HANCOCK LIFE INSURANCE
COMPANY (U.S.A.), a Michigan corporation

By: *TJ Treacy*
Name: Thomas J. Treacy
Title: Assistant V.P.
duly authorized

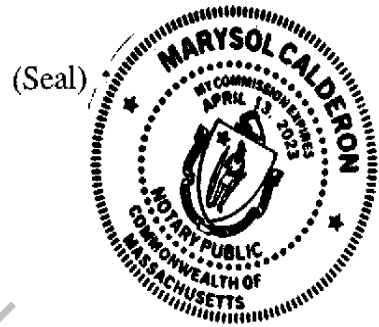
THE COMMONWEALTH OF MASSACHUSETTS)

COUNTY OF SUFFOLK)

On this 11th day of September, 2019, before me, the undersigned Notary Public, personally appeared Thomas J. Treacy, proved to me through satisfactory evidence of identification, which was/were personally known, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose(s) as an Assistant VP for John Hancock Life Insurance Company (U.S.A.), a Michigan corporation.

Marysol Calderon
Signature of Notary

My commission expires: 4/13/23



UNOFFICIAL COPY

LENDER'S ACKNOWLEDGMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

The Commonwealth of Massachusetts)
)
County of Suffolk)

On _____ before me, _____, a Notary Public,
personally appeared _____, 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

Property of Cook County Clerk's Office

/

UNOFFICIAL COPYEXHIBIT A**LEGAL DESCRIPTION OF THE SHOPPING CENTER****PART I – LANDLORD’S PARCEL****Parcel 1:**

Lots 1, 2, 3, 7, 8 and 11 in Stony Island and 95th Street Subdivision being part of the Northwest Quarter of Section 12, Township 37 North, Range 14 East of the Third Principal Meridian, according to the Plat thereof recorded May 16, 2001 as document number 0010413114, in Cook County, Illinois.

Parcel 2:

Non-exclusive Easement Appurtenant for Ingress and Egress for the benefit of Parcel 1 over and across the roadways and walkways as granted in the Reciprocal Easement Agreement recorded October 11, 2001 as document number 0010947632 over and across the following described parcel:

Lot 4 in Stony Island and 95th Street Subdivision being part of the Northwest Quarter of Section 12, Township 37 North, Range 14 East of the Third Principal Meridian, according to the Plat thereof recorded May 16, 2001 as document number 0010413114, in Cook County, Illinois.

Parcel 3:

Non-exclusive Easement Appurtenant for Drainage for the benefit of Lots 1 through 8 in Parcel 1 over and across a 30-foot strip located in the Southwest corner of Lot 10 as created by the Plat of Subdivision recorded May 16, 2001, as document number 0010413114, in Cook County, Illinois.

Parcel 4:

Non-exclusive Easement for Ingress and Egress for the benefit of Lots 1, 2, 3, 7 and 8 in Parcel 1 over a 20-foot strip running across Lots 9 and 10 as created by the Plat of Subdivision recorded May 16, 2001, as document number 0010413114, in Cook County, Illinois.

Commonly Known As:

Stony Island Plaza
95th Street and Stony Island Avenue
Chicago, Illinois

PIN: 25-12-100-026-0000
25-12-100-027-0000
25-12-100-028-0000
25-12-100-032-0000
25-12-100-033-0000
25-12-100-036-0000