



\*2122412005\*

Doc# 2122412005 Fee \$74.00

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.

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 08/12/2021 09:50 AM PG: 1 OF 10

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

LOCATION: Niles, IL

1 APN: 10-29-403-025-0000, 10-29-403-026-0000, 10-29-403-027-0000, 10-29-403-028-0000, 10-29-  
2 403-029-0000, 10-29-403-030-0000, 10-29-403-032-0000, 10-29-403-033-0000.

3

4 This Subordination, Nondisturbance and Attornment Agreement (the "Agreement") is  
5 effective as of this 23 day of June, 2021, by and between NATIONWIDE  
6 LIFE INSURANCE COMPANY, an Ohio corporation (the "Lender"), ROSS DRESS FOR LESS,  
7 INC., a Virginia corporation (the "Tenant"), and TMT POINTE PLAZA, INC., a Delaware  
8 corporation (the "Landlord").

9

BACKGROUND

10 A. Lender is the current owner and holder of (1) that certain deed of trust, or mortgage  
11 or other similar security instrument (either, the "Mortgage") in the original amount of  
12 \$25,150,000.00 recorded on July 31, 2014 in the Official Records of Cook County, Illinois, as  
13 instrument number 1421234087, encumbering the real estate more particularly described in the  
14 Mortgage and commonly known as Pointe Plaza located in Niles, Illinois (the "Property").

15 B. Tenant is negotiating (or has executed on or about the date hereof) a lease agreement  
16 (the "Lease") with Landlord to lease certain premises located at the Property (the "Premises").

17 C. Tenant, Landlord and Lender desire to confirm their understanding with respect to  
18 the Mortgage and the Lease.

19 NOW THEREFORE, in consideration of the mutual promises of this Agreement, and  
20 intending to be legally bound hereby, the parties hereto agree and covenant as follows:

21 1. Subordination. The Lease and the rights of Tenant thereunder (including purchase  
22 options, rights of first refusal or similar rights, if any) are hereby subordinated and made subject to  
23 the Mortgage, and any amendment, renewal, substitution, extension or replacement thereof and each  
24 advance made thereunder as though the Mortgage, and each such amendment, renewal, substitution,

S N  
P 10  
S Y H  
M Y  
SC Y  
E Y  
INTER

# UNOFFICIAL COPY

1 extension or replacement were executed and recorded, and the advance made, prior to the execution  
2 of the Lease.

3         2.     Non-Disturbance. Provided Tenant is in possession of the Premises and is not in  
4 default in the payment of rent or in the performance of any of the terms, covenants or conditions of  
5 the Lease beyond any applicable notice and cure periods, Lender, and its successors and assigns and  
6 any purchaser of the Property upon a foreclosure or otherwise, agrees that no foreclosure (whether  
7 judicial or nonjudicial), deed in lieu of foreclosure, or other sale of the Property in connection with  
8 the enforcement of the Mortgage or otherwise in satisfaction of the underlying loan shall terminate  
9 the Lease or Tenant's rights thereunder to possess and use the leased space; and subject to the terms  
10 of this Agreement, Lender and its successors and assigns and any purchaser of the Property shall  
11 recognize Tenant's rights, benefits and privileges under the Lease and shall recognize the leasehold  
12 estate of Tenant under all of the terms, covenants and conditions of the Lease for the remaining  
13 balance of the term of the Lease with the same force and effect as if Lender (or its successor, assign  
14 or purchaser) were the landlord under the Lease.

15         3.     Attornment. If Lender succeeds to the interest of Landlord as landlord under the  
16 Lease, or if the Property or the Premises are sold pursuant to Lender's rights under the Mortgage,  
17 Tenant shall attorn to Lender, its successors and assigns, or a purchaser upon any such foreclosure  
18 sale, and shall recognize Lender, or such purchaser, thereafter as landlord under the Lease and  
19 agrees to be bound under all the terms, covenants and conditions of the Lease. Such attornment  
20 shall be effective and self-operative without the execution of any further instruments. Tenant agrees,  
21 however, to execute and deliver at any time and from time to time, upon the request of any holder(s)  
22 of any of the indebtedness or other obligations secured by the Mortgage, or upon request of any  
23 such purchaser, (a) any instrument or certificate which in the reasonable judgment of such holder(s),  
24 or such purchaser, may be necessary or appropriate in any such foreclosure proceeding or otherwise  
25 to evidence such attornment and (b) an instrument or certificate regarding the status of the Lease,  
26 consisting of statements, if true (and if not true, specifying in what respect) reasonably requested by  
27 such purchaser, including, without limitation: (i) that the Lease is in full force and effect, (ii) the date  
28 through which rentals have been paid, (iii) the duration and date of the commencement of the term  
29 of the Lease, (iv) the nature of any amendments or modifications to the Lease, (v) that no default, or  
30 state of facts, which with the passage of time or notice, or both, would constitute a default, exists on  
31 the part of either party to the Lease, and (vi) the dates on which payments of additional rent, if any,  
32 are due under the Lease.

33         4.     Special Rights of Lender. If Lender exercises any of its rights under the Assignment  
34 or the Mortgage, or if Lender shall succeed to the interest of Landlord under the Lease, or if any  
35 purchaser acquires the Property, or the Premises, upon or after any foreclosure of the Mortgage, or  
36 any deed in lieu thereof, Lender or such purchaser, as the case may be, shall have the same remedies  
37 by entry, action or otherwise in the event of any default by Tenant (beyond any applicable notice  
38 and cure period) in the payment of rent or in the performance or observance of any of the terms,  
39 covenants and conditions of the Lease on Tenant's part to be paid, performed or observed that  
40 Landlord had or would have had if Lender or such purchaser had not succeeded to the interest of  
41 the present Landlord. Lender or purchaser shall be bound to Tenant under all terms, covenants and  
42 conditions under the Lease. Provided, however, that Lender or such purchaser shall only be bound  
43 during the period of its ownership, and that in the case of the exercise by Lender of its rights under  
44 the Mortgage, or the Assignment, or any combination thereof, or a foreclosure, or deed in lieu of  
45 foreclosure, all Tenant claims shall be satisfied only out of the interest, if any, of Lender, or such

# UNOFFICIAL COPY

1 purchaser, in the Property, and Lender or such purchaser shall not be: (a) liable for any act or  
 2 omission of any prior landlord, including the Landlord, except for such acts or omissions that result  
 3 in a default that meets all of the following criteria: (i) is continuing in nature, (ii) is related to the  
 4 physical condition of the property, e.g. roof leaks, and (iii) that Lender or such purchaser has been  
 5 notified of and has been given an opportunity to cure pursuant to Section 6 hereof; provided further  
 6 that Lender's liability for such act or omission that meets all of the foregoing criteria in (a), shall be  
 7 limited to an amount equal to six (6) months of Minimum Rent (as defined in the Lease) and shall  
 8 not include any responsibility for the payment of any tenant improvement allowance or completion  
 9 of any construction of the Premises, but shall apply to Landlord's maintenance obligations under the  
 10 lease; (b) liable to refund to Tenant any security deposit which Tenant shall have paid to any prior  
 11 landlord (including the Landlord) unless such security deposit has been delivered to Lender; or (c)  
 12 bound by any rent or additional rent which Tenant might have paid for more than the current  
 13 month to any prior landlord (including Landlord); or (d) bound by any amendment or modification  
 14 of the Lease made without Lender's prior written consent, which consent shall not be unreasonably  
 15 withheld or delayed; provided, however, Lender shall have the right to withhold its consent with  
 16 respect to any amendment or modification which would materially adversely affect Lender's rights in  
 17 the Premises (including, but not limited to those modifications that affects the economics of the  
 18 property); or (e) subject to any offsets or defenses which Tenant might have against any prior  
 19 landlord (including Landlord) except for such offsets or defenses that are the result of a default that  
 20 meets all of the following criteria: (i) is continuing in nature, (ii) is related to the physical condition  
 21 of the property, and (iii) that Lender or such purchaser has been notified of and has been given an  
 22 opportunity to cure pursuant to Section 6 hereof; further provided that Lender's liability for such  
 23 offsets or defenses that meet all of the foregoing criteria in (e), shall be limited to an amount equal  
 24 to six (6) months of Minimum Rent (as defined in the Lease) and shall not include any responsibility  
 25 for the payment of any tenant improvement allowance or completion of any construction of the  
 26 Premises, but shall apply to Landlord's maintenance obligations under the Lease; or (f) liable for or  
 27 incur any obligation with respect to the construction of the Property or any improvements of the  
 28 Premises or the Property; or (g) liable for any obligation with respect to any breach of warranties or  
 29 representations of any nature under the Lease or otherwise, including without limitation, any warranties  
 30 or representations respecting use, compliance with zoning, Landlord's title, Landlord's authority,  
 31 habitability and/or fitness for any purpose, or possession; or (h) liable for consequential damages; or (i)  
 32 be responsible for the payment of Unamortized Costs (as defined in the Lease).

33         5. Payment of Rent to Lender. After written notice is given to Tenant by Lender that  
 34 Landlord is in default under the Mortgage and that the rentals under the Lease should be paid to  
 35 Lender (the "Rent Notice") pursuant to the Assignment granted by Landlord to Lender in  
 36 connection therewith, Tenant shall thereafter pay to Lender all rent and other amounts due or to  
 37 become due (the "Rent") to Landlord under the Lease. Landlord hereby expressly authorizes Tenant  
 38 to make such payments to Lender upon reliance on Lender's written notice (without any inquiry into  
 39 the factual basis for such notice or any prior notice to or consent from Landlord) and hereby  
 40 releases Tenant from all liability, excepting Tenant fraud, to Landlord in connection with Tenant's  
 41 compliance with Lender's written instructions. Provided that no Rent has been paid more than  
 42 thirty (30) days in advance of its due date, Tenant shall not be liable to Lender for Rent paid to  
 43 Landlord prior to receipt of the Rent Notice; further provided, however, Tenant's estimated  
 44 payments towards its share of Common Area Charges (as defined in the Lease), insurance, Real  
 45 Estate Taxes (as defined in the Lease) or otherwise shall not be deemed "paid in advance" when  
 46 paid in accordance with the terms of the Lease.

# UNOFFICIAL COPY

1           6.     Notice and Right to Cure. Tenant agrees, until the Mortgage is released by Lender,  
 2 to provide Lender with a copy of each notice of default given to Landlord under the Lease at the  
 3 same time such notice of default is given to Landlord. In the event of any default by Landlord  
 4 under the Lease, Tenant shall not seek to terminate the Lease or to exercise any rights to setoff or  
 5 abate Rent or any other remedies, until Lender has received such notice and has been given the  
 6 opportunity, but without undertaking Landlord's other obligations under the Lease, to cure the  
 7 default within sixty (60) days from receipt of notice. In the event Lender has begun action to cure  
 8 the default, but not completed the same during the sixty (60) day period, Tenant agrees that Lender  
 9 shall have a reasonable period of time thereafter to do so. If the default is such that it cannot  
 10 practically be cured by Lender without taking possession of the Premises, Tenant agrees that any  
 11 right it may have to terminate the Lease or to setoff or abate any Rent, shall be suspended for a  
 12 reasonable period of time (not to exceed one hundred eighty (180) days) so long as Lender is  
 13 diligently proceeding to acquire possession of the Premises, by foreclosure or is otherwise  
 14 undertaking to cure the default of Landlord. Notwithstanding the foregoing, Lender shall have no  
 15 obligation to cure any default under the Lease.

16           7.     Tenant Representations and Warranties. Tenant hereby warrants and represents,  
 17 covenants and agrees with Lender, so long as the Mortgage has not been released: (a) not to amend,  
 18 alter, modify, cancel or terminate the Lease in any respect without the prior written consent of  
 19 Lender, which consent will not be unreasonably withheld, conditioned or delayed; provided,  
 20 however, nothing in this Agreement shall limit Tenant's right to terminate the Lease in accordance  
 21 with the express provisions of the Lease, including, but not limited to, the provisions of Sections  
 22 5.2, 5.7 and 5.8 of the Lease; (b) not to subordinate the Lease to any other mortgage, without  
 23 Lender's prior written consent in each instance, and (c) that Tenant is now (or will be) the sole  
 24 owner of the leasehold estate created by the Lease and shall not hereafter assign the Lease except as  
 25 permitted by the terms thereof, and that notwithstanding any such assignment or any sublease,  
 26 Tenant shall remain primarily liable for the observance and performance of its agreements under the  
 27 Lease, except as provided in Section 19.4 of the Lease.

28           8.     Limitation of Liability. Anything herein or in the Lease to the contrary  
 29 notwithstanding, in the event that Lender shall acquire title to the Property, Lender shall have no  
 30 obligation, nor incur any liability, beyond Lender's then interest in the Property, and Tenant shall  
 31 look exclusively to such interest of Lender in the Property for the payment and discharge of any  
 32 obligations imposed upon Lender hereunder or under the Lease, or otherwise, subject to the  
 33 limitation of Lender's obligations provided for in Section 4 above. For purposes hereof "interest in  
 34 the Property", shall include rents due from tenants, insurance proceeds, profits from sale and  
 35 proceeds from condemnation or eminent domain proceedings.

36           9.     Notices. All notices or communications required or permitted hereunder  
 37 (collectively "Notices") shall be in writing, and shall be deemed properly given, on the date of actual  
 38 delivery, or on the date that the recipient refuses delivery. Delivery shall be made by United States  
 39 mail, registered or certified, return receipt requested, or by a nationally recognized overnight  
 40 courier service; and sent to the addresses set forth below:

41                   LENDER:                   Nationwide Life Insurance Company  
 42    One Nationwide Plaza  
 43    Columbus, OH 43215  
 44    Attn.: Real Estate Investment 1-05-701

# UNOFFICIAL COPY

1                   TENANT:               Ross Dress For Less, Inc.  
 2                                       5130 Hacienda Drive  
 3                                       Dublin, CA 94568-7579  
 4                                       Attn.: Real Estate Legal Notice Department

5                   LANDLORD:           TMT Pointe Plaza, Inc.  
 6                                       c/o Mid-America Asset Management, Inc.  
 7                                       1 Parkview Plaza, 9th Floor  
 8                                       Oakbrook Terrace, IL 60181  
 9                                       Attn.: Michael Mazza

10                   With a copy to:

11                                       TMT Pointe Plaza, Inc.  
 12                                       c/o Stockbridge Capital Group, LLC  
 13                                       Four Embarcadero Center, Suite 3300  
 14                                       San Francisco, CA 94111  
 15                                       Attn.: Asset Manager

16                   And

17                                       TMT Pointe Plaza, Inc.  
 18                                       c/o Stockbridge Capital Group, LLC  
 19                                       300 N. La Salle Street, Suite 5450  
 20                                       Chicago, IL 60601  
 21                                       Attn.: Stephanie Chrisman  
 22

23                   A party may, by notice to the other parties, designate a new address to which notices shall  
 24 thereafter be delivered.

25                   10.    Parties Bound. The provisions of this Agreement shall be binding upon and inure to  
 26 the benefit of Tenant, Lender and Landlord and their respective successors and/or assigns  
 27 (including any purchaser of the Property). Any party may record this Agreement at any time.

28                   11.    Intentionally Deleted.

29                   12.    Captions. Captions and headings of sections are not parts of this Agreement and  
 30 shall not be deemed to affect the meaning or construction of any of the provisions of this  
 31 Agreement.

32                   13.    Counterparts. This Agreement may be executed in several counterparts each of  
 33 which when executed and delivered is an original, but all of which together shall constitute one  
 34 instrument.

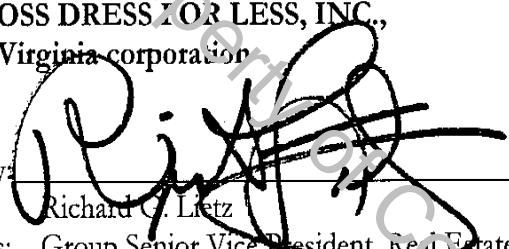
# UNOFFICIAL COPY

1           14. Governing Law. This Agreement shall be governed by and construed in accordance  
2 with the laws of the state where the Property is located.


3           15. Terms Specific to Agreement. Tenant, Landlord and Lender agree that the  
4 provisions in this Agreement are specific to the Premises and Tenant, and does not indicate consent  
5 by Lender to enter into any similar such agreements at the Property, with the Tenant, or with the  
6 Landlord.

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


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

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

TMT POINTE PLAZA, INC.,  
a Delaware corporation

By:   
Name: Stephanie Chrisman  
Its: Vice President

LENDER:  
NATIONWIDE LIFE  
INSURANCE COMPANY, an Ohio  
corporation

By:   
Name: DENNIS C. FISHER  
Its: SENIOR INVESTMENT PROFESSIONAL  
RE RISK  
AUTHORIZED SIGNATORY

9

# TENANT ACKNOWLEDGMENT

## 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 )

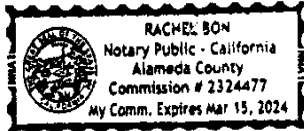
On June 10, 2021, before me, Rachel Bon, a Notary Public, personally appeared Richard G. Lietz, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their 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.

*Rachel Bon*

Notary Public



# UNOFFICIAL COPY

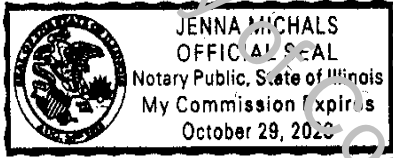
## LANDLORD ACKNOWLEDGMENT

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

State of Illinois )  
)  
County of Cook )

On June 23<sup>rd</sup>, 2021 before me, Jenna Michals, a Notary Public, personally appeared Stephanie Chrisman, 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.



Jenna Michals  
Notary Public

PROPERTY OF COOK COUNTY CLERK'S OFFICE



# UNOFFICIAL COPY

## LENDER ACKNOWLEDGMENT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15

State of OHIO )

County of FRANKLIN )

On July 8, 2021 before me, Debra L. Horvath, a Notary Public, personally appeared Dennis C. Fisher, 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.

Debra L. Horvath

Notary Public



DEBRA L. HORVATH  
Notary Public, State of Ohio  
My Commission Expires  
07-17-2023

# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION OF THE SHOPPING CENTER

#### (LANDLORD'S PARCEL)

##### PARCEL 1:

LOTS 2, 3, 4, 5, 6, 7, 9 AND 10 IN POINTE PLAZA SUBDIVISION, BEING A SUBUBDIVISION OF LOT 2 IN ANNIE MULLEN SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTH EAST QUARTER OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 22, 1999 AS DOCUMENT NUMBER 09188471, IN COOK COUNTY, ILLINOIS

##### PARCEL 2:

EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1, AS CREATED BY THAT CERTAIN EASEMENT WITH COVENANTS AND RESTRICTIONS DATED DECEMBER 30, 1998 AND RECORDED MARCH 18, 1999 AS DOCUMENT 99265776 BY AND BETWEEN TDC NILES, L.L.C. AND WAL-MART REAL ESTATE BUSINESS TRUST, AS AMENDED BY FIRST AMENDMENT TO EASEMENT WITH COVENANTS AND RESTRICTIONS RECORDED APRIL 7, 1999 AS DOCUMENT NO. 99334830.