



2222241023

Doc# 2222241023 Fee \$88.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 08/10/2022 11:53 AM PG: 1 OF 10

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 ATTORNMEN T AGREEMENT

LOCATION: RIVER GROVE, ILLINOIS

1 APN: 12-26-201-077-0000.

2

3

4

5

6

7

This Subordination, Non disturbance and Attornment Agreement (the "Agreement") is effective as of this 21 day of July, 2022, by and between AMERICAN NATIONAL INSURANCE COMPANY, a Texas insurance company (the "Lender"), ROSS DRESS FOR LESS, INC., a Virginia corporation (the "Tenant") and EAST COAST ACQUISITIONS LLC, a Delaware limited liability company (the "Landlord").

8

RECITALS

9

10

11

12

13

14

15

16

A. Lender is 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 in the Official Records of Cook County as Document No. 2222241016.

17

18

19

20

B. Tenant has executed that certain lease with Landlord's predecessor-in-interest, dated for reference purposes on March 25, 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."

21

22

23

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.

24

25

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



UNOFFICIAL COPY

AGREEMENTS

1
2 NOW, THEREFORE, the parties hereto in consideration of the mutual covenants
3 herein contained, and intending to be legally bound by hereby agree as follows:

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

8 2. Lender approves of the Lease.

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

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

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

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

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

38 4. In the event of the termination of the Mortgage by foreclosure, summary proceedings
39 or otherwise, and if Tenant is not in default under the terms and conditions of the Lease so as to
40 permit the Landlord thereunder to terminate the Lease, then, and in any such event, Tenant shall not

UNOFFICIAL COPY

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

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

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

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

22 8. If Landlord executes and delivers to Lender an Assignment of Leases and Rents
23 conveying the rent under the Lease upon an event of default by Landlord under the Mortgage, after
24 receipt of notice from Lender to Tenant (at the address set forth below) that rents under the Lease
25 should be paid to Lender, Tenant shall thereafter pay to Lender all monies thereafter due to Landlord
26 under the Lease. In such event, Tenant shall be entitled to rely solely upon such notice, and Landlord
27 and Lender hereby indemnify and agree to defend and hold Tenant harmless from and against any
28 and all expenses, losses, claims, damages or liabilities arising out of Tenant's compliance with such
29 notice or performance of the obligations under the Lease by Tenant made in good faith in reliance on
30 and pursuant to such notice. Tenant shall be entitled to full credit under the Lease for any rents paid
31 to Lender in accordance with the provisions hereof. Any dispute between Lender (or any other
32 purchaser) and Landlord as to the existence of a default by Landlord under the provisions of the
33 Mortgage, shall be dealt with and adjusted solely between Lender (or any other purchaser) and
34 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
36 the purposes stated in the Lease.

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

UNOFFICIAL COPY

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

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

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

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

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

23 American National Insurance Company
24 2525 South Shore Blvd., Suite 207
25 League City, TX 77573
26 Attn.: Mortgage and Real Estate Investment Department

27
28 and Tenant's address is:

29 Ross Dress For Less, Inc.
30 5130 Hacienda Drive
31 Dublin, CA 94568-7579
32 Attn.: Real Estate Legal Notice Department

33
34 and Landlord's address is:

35 East Coast Acquisitions LLC
36 13041 W. Linebaugh Avenue
37 Tampa, FL 33626
38 Attn.: _____

UNOFFICIAL COPY

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

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

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

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

20 [REMAINDER OF PAGE INTENTIONALLY BLANK]

UNOFFICIAL COPY

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

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

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

LENDER:
AMERICAN NATIONAL INSURANCE
COMPANY,
 a Texas insurance company

By: *Jeff Sealy*
 Jeff Sealy
 Its: Senior Vice President, Real Estate

By: *Anne M. LeMire*
 Anne M. LeMire
 Name: SVP & Chief Securities
 Its: Investment Officer

LANDLORD:
EAST COAST ACQUISITIONS LLC,
 a Delaware limited liability company

By: _____
 Name: _____
 Its: _____

8

UNOFFICIAL COPY

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.

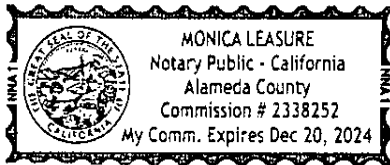
State of California)
)
 County of Alameda)

On July 21 2022 before me, Monica Leasure, a Notary Public, personally appeared Jeff Sealy, 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.

Monica Leasure
 Notary Public



UNOFFICIAL COPY

LANDLORD:
ECA BULIGO THATCHER WOODS PARTNERS, LP,
a Delaware limited partnership

By: *C Wild*
Name: Christopher Wild
Title: President

Property of Cook County Clerk's Office

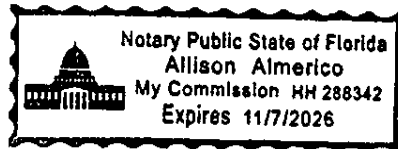
LANDLORD ACKNOWLEDGEMENT

State of Florida)
County of Hillsborough)

On August 2, 2022 before me, Allison Almerico, a Notary Public, personally appeared Christopher Wild, 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 instruments.

WITNESS my hand and official seal.

Allison Almerico
Notary Public



UNOFFICIAL COPY

LENDER ACKNOWLEDGMENT

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

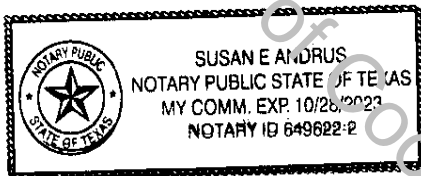
State of Texas)

County of Galveston)

On August 1, 2022 before me, Susan E. Andrus, a Notary Public, personally appeared Anne M. Lemire, 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.

Susan E Andrus
Notary Public



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF THE SHOPPING CENTER LANDLORD'S PARCEL

LOT "A" IN RIVER GROVE ESTATE, BEING A SUBDIVISION IN THE NORTHEAST FRACTIONAL 1/4 LOT OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL:
THAT PART OF LOT "A" IN RIVER GROVE ESTATE AFORESAID BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE MOST NORTHERLY NORTHWEST CORNER OF SAID LOT "A"; THENCE EAST ON THE NORTH LINE OF SAID LOT "A" A DISTANCE OF 31.58 FEET; THENCE SOUTH AT RIGHT ANGLES TO SAID NORTH LINE OF LOT "A" TO THE SOUTHEASTERLY LINE OF LOT "B" IN SAID RIVER GROVE ESTATE, EXTENDED NORTHEASTERLY; THENCE SOUTHWESTERLY ON SAID SOUTHEASTERLY LINE OF LOT "B" EXTENDED TO THE MOST EASTERLY CORNER OF LOT "B"; THENCE NORTHWESTERLY ON THE NORTHEASTERLY LINE OF LOT "B" AND SAID NORTHEASTERLY LINE, EXTENDED TO THE NORTHWESTERLY LINE OF SAID LOT "A" TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

APN: 12-26-201-077-0000.

8355 W. Belmont Avenue, River Grove, Cook County, Illinois 60171