

2007-014345

Klamath County, Oregon



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08/14/2007 03:31:18 PM

Fee: \$71.00

RECORDING REQUESTED BY:

Ross Dress For Less, Inc.

AND WHEN RECORDED MAIL TO:

Ross Dress For Less, Inc.

4440 Rosewood Drive

Mail Stop PL4 4E 2

Pleasanton, CA 94588-3050

Attn.: Mark E. Daspit, Esq.

Real Estate Law Department

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

LOCATION: KLAMATH FALLS, OREGON

This Subordination, Nondisturbance and Attornment Agreement (the "Agreement") is effective as of this ~~12~~^{July} day of ~~June~~^{July}, 2007, by and between WELLS FARGO BANK, NATIONAL ASSOCIATION, a National Association (the "Lender"), ROSS DRESS FOR LESS, INC., a Virginia corporation (the "Tenant") and KLAMATH-JEFFERSON, LLC, an Oregon 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."

B. Tenant or Tenant's predecessor in interest has executed, or will execute, a certain lease with Landlord, dated for reference purposes on March 31, 2004 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.

"Klamath Falls"
Jefferson Square Mall
Klamath Falls, OR
Store No. 817

7/14/07

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

3
4 **AGREEMENTS**

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

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

10
11 2. Lender approves of the Lease.

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

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

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

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

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

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

22
23 5. Tenant hereby confirms that the Lease is in full force and effect.

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

29
30 7. Unless and until Lender or any subsequent purchaser succeeds to the interest of Landlord
31 under the Lease, Landlord shall continue to perform Landlord's obligations and duties under the Lease.

32
33 8. If Landlord executes and delivers to Lender an Assignment of Leases and Rents
34 conveying the rent under the Lease upon an event of default by Landlord under the Mortgage, after
35 receipt of notice from Lender to Tenant (at the address set forth below) that rents under the Lease should
36 be paid to Lender, Tenant shall thereafter pay to Lender all monies thereafter due to Landlord under the
37 Lease. In such event, Tenant shall be entitled to rely solely upon such notice, and Landlord and Lender
38 hereby indemnify and agree to defend and hold Tenant harmless from and against any and all expenses,
39 losses, claims, damages or liabilities arising out of Tenant's compliance with such notice or performance
40 of the obligations under the Lease by Tenant made in good faith in reliance on and pursuant to such

1 notice. Tenant shall be entitled to full credit under the Lease for any rents paid to Lender in accordance
2 with the provisions hereof. Any dispute between Lender (or any other purchaser) and Landlord as to the
3 existence of a default by Landlord under the provisions of the Mortgage, shall be dealt with and adjusted
4 solely between Lender (or any other purchaser) and Landlord, and Tenant shall not be made a party
5 thereto.

6
7 9. Lender shall use the proceeds of any insurance recovery or condemnation award for the
8 purposes stated in the Lease.

9
10 10. No modification, amendment, waiver or release of any provision of this Agreement or of
11 any right, obligation, claim or cause of action arising thereunder shall be valid or binding for any
12 purpose whatsoever unless in writing and duly executed by the party against which the same is brought
13 to be asserted.

14
15 11. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto
16 and their respective heirs, legal representatives, successors and assigns, including without limitation, the
17 covenants of Lender herein shall be specifically binding upon any purchaser of the Shopping Center at
18 foreclosure or at a sale under power of sale.

19
20 12. In the event any one or more of the provisions contained in this Agreement shall for any
21 reason be held to be invalid, illegal or unenforceable in any respect, said provision(s) shall be void and
22 of no further force or effect.

23
24 13. This Agreement shall be governed and construed according to the laws of the state where
25 the Shopping Center is located.

26
27 14. Lender shall not institute any litigation naming Tenant as a defendant for the purpose of
28 foreclosing or otherwise terminating Tenant's leasehold interest in the Shopping Center or the Premises
29 unless Tenant is required to be named in such litigation by law, and then only for the purpose of
30 complying with the applicable foreclosure statute and so long as Tenant's failure to defend against any
31 such action shall not result in a waiver of its rights to continued possession under the Lease as set forth
32 in this Agreement. The term "Lender" as used herein shall include any successor-in-interest to the
33 Lender (including a purchaser at foreclosure or sale in lieu thereof).

34
35 15. To be effective, any notice or other communication given pursuant to this Agreement
36 must be in writing and sent postage paid by United States registered or certified mail with return receipt
37 requested. Rejection or other refusal to accept, or inability to deliver because of changed address of
38 which no notice has been given, will constitute receipt of the notice or other communication. For
39 purposes hereof, Lender's address is:

"Klamath Falls"
Jefferson Square Mall
Klamath Falls, OR
Store No. 817

Wells Fargo Bank, National Association
1320 WILLOW PASS ROAD, SUITE 205
CONCORD, CA 94520
Attn: FAX NO. (925) 691-5249

and Tenant's address is:

Ross Dress For Less, Inc.
4440 Rosewood Drive
Mail Stop PL4 4E 2
Pleasanton, CA 94588-3050
Attn.: Real Estate Legal Notice Department

and Landlord's address is:

Klamath-Jefferson, LLC
c/o Dickerhoof Properties
1600 SW Western Blvd, No. 175
Corvallis, OR 97333
Attn.: Darren Dickerhoof

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.

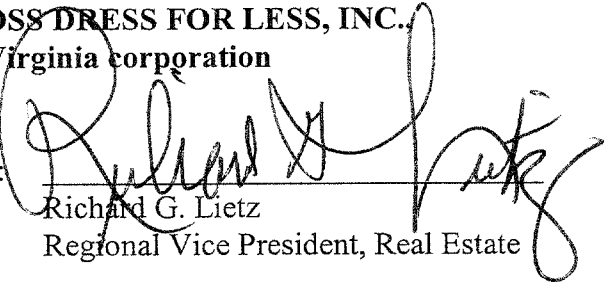
17. In the event of any litigation arising out of the enforcement or interpretation of any of the provisions of this Agreement, the unsuccessful party shall pay to the prevailing party its reasonable attorneys' fees, including costs of suit, discovery and appeal. The "prevailing party" shall be that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

1 and that the terms and conditions thereof shall be as stated in the Lease, subject to the provisions of this
2 Agreement.

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

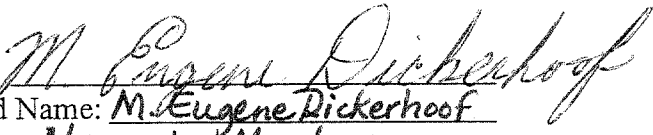
TENANT:
ROSS DRESS FOR LESS, INC.,
a Virginia corporation

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

LENDER:
WELLS FARGO BANK, N.A.,
a National Association

By: _____
Name: _____
Its: _____

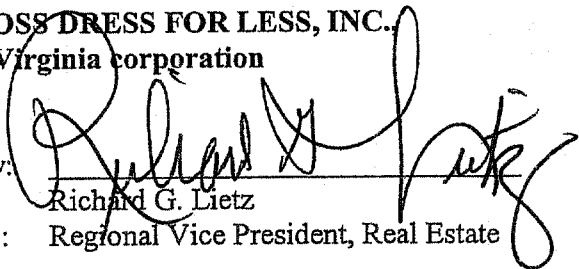
LANDLORD:
KLAMATH-JEFFERSON, LLC,
an Oregon limited liability company

By: 
Printed Name: M. Eugene Rickerhoof
Its: Managing Member

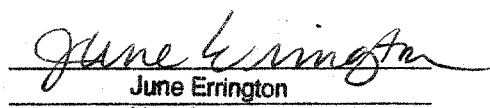
1 and that the terms and conditions thereof shall be as stated in the Lease, subject to the provisions of this
2 Agreement.

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


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

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

LENDER:
WELLS FARGO BANK, N.A.,
a National Association

By: 
Name: June Errington
Its: Vice President

LANDLORD:
KLAMATH-JEFFERSON, LLC,
an Oregon limited liability company

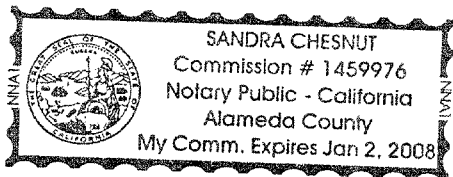
By: 
Printed Name: M. Eugene Dickerhoof
Its: Managing Member

5

1 State of California)
2) ss.
3 County of Alameda)

4 On June 20, 2007 before me, Sandra Chesnut,
5 a Notary Public, personally appeared Richard G. Lietz, personally known to me, or proved to me on the
6 basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and
7 acknowledged to me that he executed the same in his authorized capacity, and that by his signature on
the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

8 WITNESS my hand and official seal.



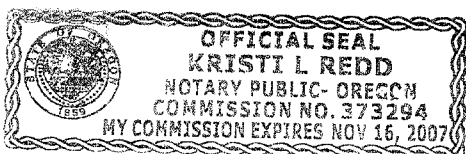
Sandra Chesnut
Notary Public

11
12 State of Oregon)
County of Klamath) ss.

13
14 On 7/18/2007 before me, Kristi L. Redd, a Notary
15 Public, personally appeared M. Eugene Dickerhoof, Managing Member of **see below
16 ~~personally known to me, or proved to me on the basis of satisfactory evidence~~, to be the person(x) whose
17 name(x) ~~is/are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the
18 same in ~~his/her/their~~ authorized capacity(~~ies~~), and that by ~~his/her/their~~ signature(~~s~~) on the instrument the
19 person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

20 WITNESS my hand and official seal.

** Klamath-Jefferson, LLC, an Oregon
limited liability company



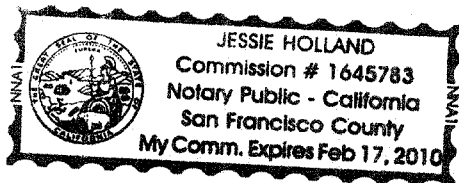
Kristi L. Redd
Notary Public

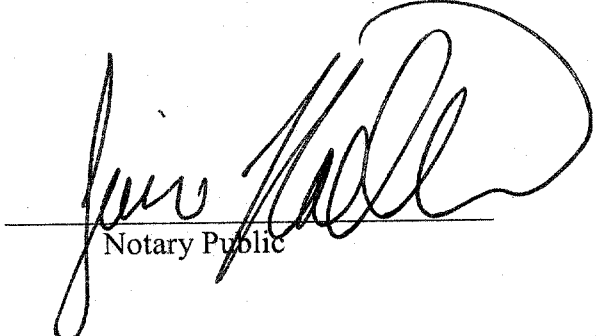
CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)
) SS.
County of San Francisco)

On August 10, 2007, before me, Jessie Holland, Notary Public, personally appeared June Errinton, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.





Notary Public

Place Notary Seal above

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State of _____)
) ss.
County of _____)

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

Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF THE SHOPPING CENTER

A parcel of land lying in the Northwest quarter of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Starting at the Northwest corner of said Section 3; thence South 00 degrees 00' 30" East along the Westerly boundary of Section 3 and the centerline of Washburn Way, 917.42 feet to the intersection with the present centerline of Sixth Street, formerly known as the Dalles-California Highway, recorded bearing South 55° 52' 30" East, at Engineers Station 9 + 17.42 feet on Washburn Way and Engineers Station 16 + 14.87 feet on Sixth Street present centerline, and continuing thence along said boundary and centerline 48.32 feet to Engineers Station 9 + 65.74 feet on South boundary of Sixth Street, which is distant 40 feet at right angles Southwesterly from centerline of Sixth Street at Engineers Station 16 + 41.99 feet; thence South 55° 52' 30" East parallel to said centerline 463.02 feet to the true point of beginning of this description; thence from said true beginning point continuing South 55 degrees 52' 30" East parallel to said centerline 795.36 feet; thence at right angles South 34 °07' 30" West, 204.00 feet; thence South 55° 52' 30" East parallel to Sixth Street 145.00 feet; thence at right angles South 34° 07' 30" West, 183.80 feet, more or less, to Northerly right way line of the Oregon, California and Eastern Railroad; thence North 66° 57' 30" West along said line 982.45 feet, more or less, to a point on the Easterly right of way line of Washburn Way which is 40.00 feet Easterly of said centerline; thence North 00° 00' 30" West along said right of way line 503.39 feet; thence South 55° 52' 30" East, 306.22 feet; thence North 34° 07' 30" East, 160.00 feet to the true point of beginning.

Tax Account No.: 3909-003BC-00900-000

Key No.: 526087

Jefferson Square Mall
Klamath Falls, OR
Store No. 817
6061.589/282090.1