



200409130036

Skagit County Auditor

9/13/2004 Page

1 of

10 9:09AM

Return Address:

Bartko, Zankel, Tarrant & Miller

900 Front Street, Suite 300

San Francisco, CA 94111

Attn: Theani C. Louskos, Esq.

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)

**SUBORDINATION, NONDISTURBANCE
AND ATTORNMENT AGREEMENT**

Reference Number(s) of Documents assigned or released: N/A

200408160080 - Lease

Additional reference #'s on page ___ of document

Grantor(s) (Last name first, then first name and initials)

1. **NEWMAN DEVELOPMENT GROUP OF BURLINGTON, LLC (Landlord)**

Additional names on page ___ of document

Grantee(s) (Last name first, then first name and initials)

1. **ROSS STORES, INC. (Tenant)**

Additional names on page ___ of document

Legal description (abbreviated: i.e., lot, block, plat or section, township, range):

LOTS 2-11, INCLUSIVE, AND LOT 15, CITY OF BURLINGTON BINDING SITE PLAN NO. BURL-01-04, BEING A PORTION OF GOV. LOT 8 AND THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4, SECTION 7, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M.

Additional legal is described on Exhibit A of this document.

Assessor's Property Tax Parcel/Account Numbers:

340407-1-023-0018, P24092, 340407-1-028-0005, P24106, 340407-1-023-0300, P112790, 340407-1-087-0005, P24033, 340407-1-027-0006, P24105, 340407-0-008-0001, P23909, 340407-0-008-0100, P23910, 340407-0-023-0200, P23928, 340407-0-006-0003, P23907, 340407-0-006-01021, P90025, 340407-0-010-0007, P23912.

RECORDING REQUESTED BY

Ross Stores, Inc.

AND WHEN RECORDED MAIL TO:

Bartko, Zankel, Tarrant & Miller
900 Front Street, Suite 300
San Francisco, CA 94111
Attn.: Theani C. Louskos, Esq.

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

LOCATION: Burlington, WA

1
2
3 This Subordination, Nondisturbance and Attornment Agreement (the "Agreement") is
4 effective as of this 30th day of July, 2004, by and between WACHOVIA BANK, NATIONAL
5 ASSOCIATION, a national banking association (the "Lender"), ROSS STORES, INC., a Delaware
6 corporation (the "Tenant") and NEWMAN DEVELOPMENT GROUP OF BURLINGTON, LLC, a
7 Washington limited liability company (the "Landlord").

RECITALS

8
9 A. Lender is the holder of indebtedness secured by a lien or liens upon, the real property
10 described in Exhibit "A" attached hereto and by this reference incorporated herein. The Exhibit "A"
11 property and improvements thereon is hereinafter referred to as the "Shopping Center." The instruments
12 creating such lien or liens whether they be denominated as being "mortgage," "deed of trust," "deed to
13 secure debt," "security agreement," "vendor's lien," "ground lease," or otherwise, and any instruments
14 modifying or amending the same, or entered into in substitution or replacement thereof, are hereinafter
15 collectively referred to as being the "Mortgage."

16 B. Tenant has executed, or will execute, a certain lease with Landlord, dated for reference
17 purposes on July 15th, 2004, for all or a portion of the Shopping Center, which portion (the
18 "Premises") is more particularly set forth in said lease. Said lease and all amendments and modifications
19 thereto are herein collectively referred to as the "Lease." A Memorandum of Lease was recorded on
20 August 16, 2004, document no. 200408160080.

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

Burlington Crossings Shopping Center
Burlington, WA
Store No. 873
6061.614/291614.1

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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, operation and effect of the Mortgage and all voluntary and involuntary advances
10 made thereunder.

11
12 2. Provided that the provisions of the Lease are in full force and effect and Tenant is not in
13 default beyond any applicable notice and cure period under any of the provisions of the Lease which
14 would permit Landlord to terminate the Lease or Tenant's right to possession of the Premises, Lender or
15 the purchaser at a foreclosure sale pursuant to any action or proceeding to foreclose the Mortgage,
16 whether judicial or non-judicial, or Lender pursuant to acceptance of a deed in lieu of foreclosure or any
17 assignment of Landlord's interest under the Lease, in the exercise of any of the rights arising, or which
18 may arise, out of the Mortgage or in any other manner: (i) shall not disturb or deprive Tenant in or of its
19 use, quiet enjoyment and possession (or its right to use, quiet enjoyment and possession) of the Premises,
20 or of any part thereof, or any right, benefit or privilege granted to or inuring to the benefit of Tenant
21 under the Lease (including any right of renewal or extension thereof); (ii) shall not terminate or
22 adversely affect the Lease; (iii) shall recognize Tenant's rights, benefits and privileges under the Lease;
23 and, (iv) shall recognize the leasehold estate of Tenant under all of the terms, covenants, and conditions
24 of the Lease for the remaining balance of the term of the Lease with the same force and effect as if
25 Lender were the Landlord under the Lease. Lender hereby covenants that any sale by it of the Shopping
26 Center pursuant to the exercise of any rights and remedies under the Mortgage or otherwise, shall be
27 made subject to the Lease and the rights of Tenant thereunder. However, 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;

34 (c) Bound by any payment of rent or additional rent made by Tenant to Landlord for
35 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; and

4 (e) Bound by or be liable for the return of any security deposit not actually delivered
5 to Lender.

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

23
24 4. Tenant hereby confirms that the Lease is in full force and effect.

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

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

33
34 7. If Landlord executes and delivers to Lender an Assignment of Leases and Rents
35 conveying the rent under the Lease upon an event of default by Landlord under the Mortgage, after
36 receipt of notice from Lender to Tenant (at the address set forth below) that rents under the Lease should
37 be paid to Lender, Tenant shall thereafter pay to Lender all monies thereafter due to Landlord under the
38 Lease. In such event, Tenant shall be entitled to rely solely upon such notice, and Landlord and Lender
39 hereby indemnify and agree to defend and hold Tenant harmless from and against any and all expenses,



1 losses, claims, damages or liabilities arising out of Tenant's compliance with such notice or performance
2 of the obligations under the Lease by Tenant made in good faith in reliance on and pursuant to such
3 notice. Tenant shall be entitled to full credit under the Lease for any rents paid to Lender in accordance
4 with the provisions hereof. Any dispute between Lender (or any other purchaser) and Landlord as to the
5 existence of a default by Landlord under the provisions of the Mortgage, shall be dealt with and adjusted
6 solely between Lender (or any other purchaser) and Landlord, and Tenant shall not be made a party
7 thereto.

8
9 8. No modification, amendment, waiver or release of any provision of this Agreement or of
10 any right, obligation, claim or cause of action arising thereunder shall be valid or binding for any
11 purpose whatsoever unless in writing and duly executed by the party against which the same is brought
12 to be asserted.

13
14 9. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto
15 and their respective heirs, legal representatives, successors and assigns, including without limitation, the
16 covenants of Lender herein shall be specifically binding upon any purchaser of the Shopping Center at
17 foreclosure or at a sale under power of sale.

18
19 10. In the event any one or more of the provisions contained in this Agreement shall for any
20 reason be held to be invalid, illegal or unenforceable in any respect, said provision(s) shall be void and
21 of no further force or effect.

22
23 11. This Agreement shall be governed and construed according to the laws of the State of
24 Washington.

25
26 12. Provided that Tenant is not in default under the Lease, Lender shall not institute any
27 litigation naming Tenant as a defendant for the purpose of foreclosing or otherwise terminating Tenant's
28 leasehold interest in the Shopping Center or the Premises unless Tenant is required to be named in such
29 litigation by law, and then only for the purpose of complying with the applicable foreclosure statute and
30 so long as Tenant's failure to defend against any such action shall not result in a waiver of its rights to
31 continued possession under the Lease as set forth in this Agreement. The term "Lender" as used herein
32 shall include any successor-in-interest to the Lender (including a purchaser at foreclosure or sale in lieu
33 thereof).

34
35 13. 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:

Burlington Crossings Shopping Center
Burlington, WA
Store No. 873
6061.614/291614.1



1
2 Wachovia Bank, NA
3 PA 1425
4 123 S. Broad Street
5 Philadelphia, PA 19103
6 Attn: Kimberly A. Lutdke
7

8 and Tenant's address is:

9 Ross Stores, Inc.
10 4440 Rosewood Drive, Building #4
11 Mail Stop PL4 4E 2
12 Pleasanton, CA 94588-3050
13 Attn.: Real Estate Legal Notice Department
14

15 and Landlord's address is:

16 Newman Development Group of Burlington, LLC
17 2255 Van Ness Avenue, Suite 102
18 San Francisco, CA 94109
19 Attn.: George Akel, III
20

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

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

28
29 15. In the event of any litigation arising out of the enforcement or interpretation of any of the
30 provisions of this Agreement, the unsuccessful party shall pay to the prevailing party its reasonable
31 attorneys' fees, including reasonable costs of suit, discovery and appeal. The "prevailing party" shall be
32 that party who obtains substantially the relief sought in the action.

33
34 16. In the event the Lease is terminated as a result of Landlord's bankruptcy or
35 reorganization, whereby Lender obtains fee title to the Shopping Center (or in the case Lender is the
36 ground lessor, retains fee title without the encumbrance of the ground lease), Lender agrees that the
37 Lease shall remain in effect as between Lender (as Landlord) and Tenant, subject to the terms of this
38 Agreement, and, upon Tenant's written request, Lender and Tenant agree to execute a reinstatement
39 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 STORES, INC.,
a Delaware corporation

LENDER:
WACHOVIA BANK,
a National Banking Association

By: Gregg McGillis
Gregg McGillis
Its: Vice President, Real Estate

By: Kimberly A. Ludtke
Name: Kimberly A. Ludtke
Its: VICE PRESIDENT

LANDLORD:
NEWMAN DEVELOPMENT GROUP OF
BURLINGTON, LLC,
a Washington limited liability company

By: George Akel
George Akel, III
Its: Member



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Skagit County Auditor

UNOFFICIAL DOCUMENT



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13

COMMONWEALTH OF PENNSYLVANIA
State of COUNTY OF PHILADELPHIA)
County of _____)

ss.

On August 11, 2004 before me, Mary Lou Lopresti, a Notary Public, personally appeared Kembecky A. Ludtke, 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.

Mary Lou Lopresti
Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Mary Lou Lopresti, Notary Public
City of Philadelphia, Philadelphia County
My Commission Expires Jan. 29, 2008
Member, Pennsylvania Association of Notaries



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**EXHIBIT A
LEGAL DESCRIPTION**

Lots 2 - 11, inclusive, and Lot 15, City of Burlington Binding Site Plan No. Burl-01-04, entitled Newman Development of Burlington, LLC, Retail/Commercial Center, approved March 8, 2004 and recorded March 15, 2004 under Skagit County Auditor's File No. 200403150156, and being a portion of Government Lot 8 and the Southeast 1/4 of the Northeast 1/4, Section 7, Township 34 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington.

Burlington Crossings Shopping Center
Burlington, WA
Store No. 873
6061.614/290280.1



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