



200605170004

Skagit County Auditor

5/17/2006 Page

1 of

10 8:52AM

WHEN RECORDED RETURN TO:

John Nicholas Suhr, Jr.
Kilpatrick Stockton LLP
Hearst Tower, Suite 2500
214 North Tryon Street
Charlotte, North Carolina 28202-2381

LAND TITLE OF SKAGIT COUNTY

120006

DOCUMENT TITLE(S):

Subordination, Non-Disturbance and Attornment Agreement

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

N/A 200604190074
 200508160080

GRANTOR(S):

Ross Dress for Less, Inc., a Virginia corporation
Stratford Hall, Inc., a New York corporation

GRANTEE(S):

Wachovia Bank, National Association, a national banking association

ABBREVIATED LEGAL DESCRIPTION:

Lots 2-11, inclusive, and Lot 15, City of Burlington Binding Site Plan No. Burl-01-04, recorded March 15, 2004 under Skagit County Auditor's File No. 200403150156.

TAX PARCEL NUMBER(S):

8048-000-002-0000/P121437, 8048-000-003-0000/P121438, 8048-000-004-0000/P121439, 8048-000-005-0000/P121440, 8048-000-006-0000/P121441, 8048-000-007-0000/P121442, 8048-000-008-0000/P121443, 8048-000-009-0000/P121444, 8048-000-013-0000/P121448, 8048-000-014-0000/P121449

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.: Amy R. Kennon, Esq.
Real Estate Law Department

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

LOCATION: BURLINGTON, WASHINGTON

This Subordination, Nondisturbance and Attornment Agreement (the "Agreement") is effective as of this 18th day of April 2006, by and between WACHOVIA BANK, National Association, a national banking association (the "Lender"), ROSS DRESS FOR LESS, INC., a Virginia corporation (the "Tenant") and ~~NEWMAN DEVELOPMENT GROUP OF BURLINGTON, LLC, a Washington limited liability company~~ (the "Landlord"). STRATFORD HALL, INC., a New York corporation

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." Recorded under Auditors # 200604190074

B. Tenant's predecessor in interest has executed a certain lease with Landlord, dated for reference purposes on July 15, 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." Recorded under Auditors #200408160080

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.

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



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Skagit County Auditor

1
2 **AGREEMENTS**

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

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

8
9 2. Lender approves of the Lease.

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

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

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

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;

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

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

18
19 5. Tenant hereby confirms that the Lease is in full force and effect.

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

25
26 7. Unless and until Lender or any subsequent purchaser succeeds to the interest of Landlord
27 under the Lease, Landlord shall continue to perform Landlord's obligations and duties under the Lease.

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



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

3
4 10. No modification, amendment, waiver or release of any provision of this Agreement or of
5 any right, obligation, claim or cause of action arising thereunder shall be valid or binding for any
6 purpose whatsoever unless in writing and duly executed by the party against which the same is brought
7 to be asserted.

8
9 11. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto
10 and their respective heirs, legal representatives, successors and assigns, including without limitation, the
11 covenants of Lender herein shall be specifically binding upon any purchaser of the Shopping Center at
12 foreclosure or at a sale under power of sale.

13
14 12. In the event any one or more of the provisions contained in this Agreement shall for any
15 reason be held to be invalid, illegal or unenforceable in any respect, said provision(s) shall be void and
16 of no further force or effect.

17
18 13. This Agreement shall be governed and construed according to the laws of the state where
19 the Shopping Center is located.

20
21 14. Lender shall not institute any litigation naming Tenant as a defendant for the purpose of
22 foreclosing or otherwise terminating Tenant's leasehold interest in the Shopping Center or the Premises
23 unless Tenant is required to be named in such litigation by law, and then only for the purpose of
24 complying with the applicable foreclosure statute and so long as Tenant's failure to defend against any
25 such action shall not result in a waiver of its rights to continued possession under the Lease as set forth
26 in this Agreement. The term "Lender" as used herein shall include any successor-in-interest to the
27 Lender (including a purchaser at foreclosure or sale in lieu thereof).

28
29 15. To be effective, any notice or other communication given pursuant to this Agreement
30 must be in writing and sent postage paid by United States registered or certified mail with return receipt
31 requested. Rejection or other refusal to accept, or inability to deliver because of changed address of
32 which no notice has been given, will constitute receipt of the notice or other communication. For
33 purposes hereof, Lender's address is:

34
35 Wachovia Bank, National Association
36 Commercial Real Estate Services
37 8739 Research Drive URP- 4, NC 1075
38 Charlotte, North Carolina 28262
39 Attn.: Portfolio Management
40
41



1 with a copy to:

2
3 Kilpatrick Stockton, LLP
4 Hearst Tower, Suite 2500
5 214 North Tyron Street
6 Charlotte, North Carolina 28202
7 Attn: John Nicholas Suhr, Jr., Esq.
8

9 and Tenant's address is:

10 Ross Dress For Less, Inc.
11 4440 Rosewood Drive
12 Mail Stop PL4 4E 2
13 Pleasanton, CA 94588-3050
14 Attn.: Real Estate Legal Notice Department
15

16 and Landlord's address is:

17 ~~Newman Development Group of Burlington, LLC~~
18 ~~2255 Van Ness Avenue, Suite 102~~
19 ~~San Francisco, California 94109~~
20 Attn.: _____
21
22

Stratford Hall, Inc.
c/o Grubb & Ellis Management Serv.
445 S. Figueroa Street, Ste. 3300
Los Angeles, CA 90071

23 At any time(s), each party may change its address for the purposes hereof by giving the
24 other party a change of address notice in the manner stated above.
25

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

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

36
37 18. In the event the Lease is terminated as a result of Landlord's bankruptcy or
38 reorganization, whereby Lender obtains fee title to the Shopping Center (or in the case Lender is the
39 ground lessor, retains fee title without the encumbrance of the ground lease), Lender agrees that the
40 Lease shall remain in effect as between Lender (as Landlord) and Tenant, subject to the terms of this



1 Agreement, and, upon Tenant's written request, Lender and Tenant agree to execute a reinstatement
2 agreement documenting that the Lease has been reinstated as between Lender (as Landlord) and Tenant
3 and that the terms and conditions thereof shall be as stated in the Lease, subject to the provisions of this
4 Agreement.

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

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

By: [Signature]
Gary Brannan
Regional Vice President, Real Estate

LENDER:
WACHOVIA BANK, NATIONAL
ASSOCIATION,
a national banking association

By: [Signature]
Printed Name: David Pike
Its: Vice President

By: _____
Printed Name: _____
Its: _____

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

By: [Signature]
Printed Name: FRANK UFF
Its: VP

STRATFORD HALL, INC.,
a New York corporation

By: _____
Printed Name: _____
Its: _____

7

1 State of California)

)

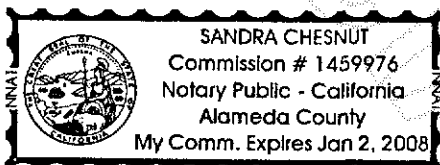
SS.

2 County of Alameda)

)

3 On April 7, 2006 before me, Sandra Chesnut,
4 a Notary Public, personally appeared Gary Brannan, personally known to me, or proved to me on the
5 basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and
6 acknowledged to me that he executed the same in his authorized capacity, and that by his signature on
7 the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

8 WITNESS my hand and official seal.



11 Sandra Chesnut
Notary Public

12 State of California)

)

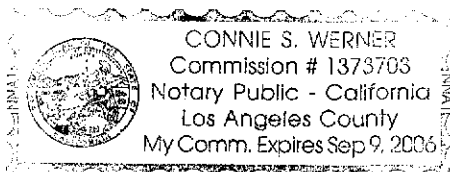
SS.

13 County of Los Angeles)

)

14 On Apr. 12, 2006 before me, Connie S. Werner, a Notary
15 Public, personally appeared Frank Lee,
16 personally known to me, or proved to me on the basis of satisfactory evidence, to be the person(s) whose
17 name(s) 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.



Connie S. Werner
Notary Public



1 State of North Carolina)

2 County of Mecklenburg) ss.

3
4 On April 28, 2006 before me, SL Wilson, a Notary
5 Public, personally appeared David Pike,
6 personally known to me, or proved to me on the basis of satisfactory evidence, to be the person(s) whose
7 name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the
8 same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
9 person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

10 WITNESS my hand and official seal.

11 SL Wilson
Notary Public

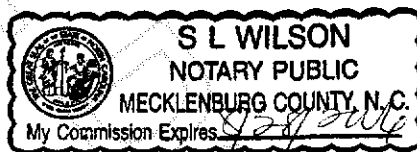


EXHIBIT A
PART I - LANDLORD'S PARCEL

Lots 2 ~ 11, inclusive, and Lot 15, City of Burlington Binding Site Plan No. Burd-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

EXHIBIT A - PART I



200605170004
Skagit County Auditor

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