



201603150080

Skagit County Auditor

\$85.00

3/15/2016 Page

1 of

13 2:17PM

AFTER RECORDING MAIL TO:

Name Frost Brown Todd LLC - any Dreisbach
Address 400 West Market St. 32nd Floor
City/State Louisville, KY 40202-3363

Document Title(s):

1. Subordination, Non-Disturbance and Attornment Agreement

Reference Number(s) of Documents Assigned or released:

201603140134

201603140135

Grantor(s):

GUARDIAN NORTHWEST TITLE CO.

1. Ross Dress for Less, Inc.
- 2.

110654

[☒] Additional information on page 2 of document

Grantee(s):

1. German American Capital Corporation
- 2.

[] Additional information on page of document

Abbreviated Legal Description:

LOTS 2 - 9, INCLUSIVE, AND LOTS 13 AND 14 CITY OF BURLINGTON BSP NO. BURL-01-04

Tax Parcel Number(s):

P121437 and P121438 and P121439 and P121440 and P121441 and P121442 and P121443 and P121444 and P121448 and P121449

[] Complete legal description is listed under Exhibit "A"

PREPARED BY AND RECORDING REQUESTED BY:

Ross Dress For Less, Inc.

AND WHEN RECORDED MAIL TO:

Ross Dress For Less, Inc.

5130 Hacienda Drive

Dublin, CA 94568-7579

Attn.: Ann C. Elliott, Esq.

Real Estate Law Department

APN: See cover page

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT

LOCATION: BURLINGTON, WASHINGTON

This Subordination, Nondisturbance and Attornment Agreement (the "Agreement") is effective as of this 10th day of March, 2016, by and between GERMAN AMERICAN CAPITAL (the "Lender"), ROSS DRESS FOR LESS, INC., a Virginia corporation (the "Tenant") and STRATFORD HALL, INC., a New York corporation, predecessor-in-interest to SHI OWNER, LLC, a Delaware 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," "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 on 3/14/16 as Document No. 201603190139 in the Official Records of SKAGW County.

B. Tenant's predecessor-in-interest has executed that certain lease with Landlord's predecessor-in-interest, 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."

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

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

6 AGREEMENTS

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

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

13 2. Lender approves of the Lease.

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

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

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

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

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

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

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

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

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

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
36 should be paid to Lender, Tenant shall thereafter pay to Lender all monies thereafter due to
37 Landlord under the Lease. In such event, Tenant shall be entitled to rely solely upon such notice,
38 and Landlord and Lender hereby indemnify and agree to defend and hold Tenant harmless from and
39 against any and all expenses, losses, claims, damages or liabilities arising out of Tenant's compliance
40 with such notice or performance of the obligations under the Lease by Tenant made in good faith in
41 reliance on and pursuant to such notice. Tenant shall be entitled to full credit under the Lease for
42 any rents paid to Lender in accordance with the provisions hereof. Any dispute between Lender (or

any other purchaser) and Landlord as to the existence of a default by Landlord under the provisions of the Mortgage, shall be dealt with and adjusted solely between Lender (or any other purchaser) and Landlord, and Tenant shall not be made a party thereto.

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

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

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

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

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

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

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

German American Capital
c/o Deutsche BANK
60 WALL ST, FL 10, NEW YORK, NY 10005
Attn: _____

1 and Tenant's address is:

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

6 and Landlord's address is:

7 SHI Owner, LLC
8 c/o Colliers International
9 601 Union Street, Suite 5300
10 Seattle, WA 98101
11 Attn.: FRANK LEE

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

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

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

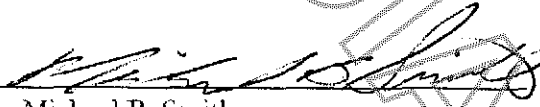
24 [REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]
25

1
2 18. In the event the Lease is terminated as a result of Landlord's bankruptcy or
3 reorganization, whereby Lender obtains fee title to the Shopping Center (or in the case Lender is the
4 ground lessor, retains fee title without the encumbrance of the ground lease), Lender agrees that the
5 Lease shall remain in effect as between Lender (as Landlord) and Tenant, subject to the terms of this
6 Agreement, and, upon Tenant's written request, Lender and Tenant agree to execute a reinstatement
7 agreement documenting that the Lease has been reinstated as between Lender (as Landlord) and
8 Tenant and that the terms and conditions thereof shall be as stated in the Lease, subject to the
9 provisions of this Agreement.

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

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

LENDER:
GERMAN AMERICAN CAPITAL,
a _____

By: 
Michael B. Smith
Its: Senior Vice President, Real Estate

By: _____
Name: _____
Its: _____

LANDLORD:
SHI OWNER, LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

SHI OWNER, LLC, a Delaware limited liability company

By: **STRATFORD HALL, INC.**, a Delaware
corporation, its Sole Member and Manager

By: _____

Name: Frank Lee

Title: Authorized Signatory

LENDER:

GERMAN AMERICAN CAPITAL CORPORATION

By: [Signature]
Name: Jon Tilli
Title: Vice President

By: [Signature]
Name: MURRAY MACKINNON
Title: VICE PRESIDENT

STATE OF New York, New York COUNTY ss:

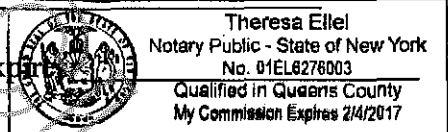
On this 9 day of March, 2016, before me, the undersigned, a Notary Public in and for the State of New York, duly commissioned and sworn, personally appeared Jon Tilli & Murray Mackinnon, the Vice Presidents of German American Cap. Corp., a Maryland Corp., and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.

Name of Notary: [Signature]
Notary Public in and for the State of _____,
residing at: _____

[SEAL]

My Commission Expires



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 Los Angeles

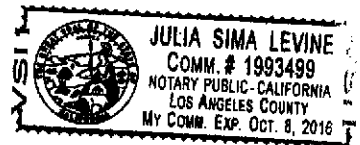
On March 10, 2016 before me, Julia Sima Levine, Notary public, personally appeared Frank Lee, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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.

Signature Julia Sima Levine

(Seal)



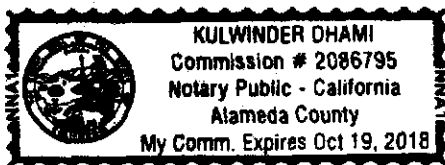
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.


State of California)
)
County of Alameda)

On March 10, 2016 before me, Kulwinder Dhani,
a Notary Public, personally appeared Michael B. Smith, 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.




Notary Public

State of _____)

County of _____)

ss.

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

State of _____)

County of _____)

ss.

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
PART I - LANDLORD'S PARCEL

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

EXHIBIT A - PART I