



201706160108

Skagit County Auditor

\$83.00

6/16/2017 Page

1 of

11

3:13PM

Land Title and Escrow

01-161766

WHEN RECORDED RETURN TO:

Heritage Bank

15 SW Everett Mall Way, Ste K

Everett, WA 98204

DOCUMENT TITLE(S):

Subordination, Non-Disturbance and
Attornment Agreement

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

201706010076

201405010064

201606140005

GRANTOR:

Dick's Sporting Goods, Inc

GRANTEE:

BURLINGTON RETAIL, LLC, a Washington Limited Liability Company

ABBREVIATED LEGAL DESCRIPTION:

Lot 1, Sportsmans Plaza BSP, AF #200601130002 W/Ptn Lot 2, Except Ptn Lot 1.

TAX PARCEL NUMBER(S):

8063-000-001-0000, P123949

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**"), is made as of the 1st day of June, 2017, by and among **BURLINGTON RETAIL, LLC**, a Washington limited liability company, having a mailing address at 8129 Lake Ballinger Way, Suite 104, Edmonds, WA 98026 ("**Landlord**"), **HERITAGE BANK**, having a mailing address at 310 Everett Commercial Lending, PO Box 1578, Olympia, WA 98507 ("**Lender**") and **DICK'S SPORTING GOODS, INC.**, a Delaware corporation, having a mailing address at 345 Court Street, Coraopolis, PA 15108 ("**Tenant**"). Landlord, Lender and Tenant are sometimes hereinafter referred to as the "**Party(ies)**".

RECITALS:

Lender is the holder of a mortgage (said mortgage, together with all amendments, substitutions, replacements and renewals thereto from time to time, collectively the ("**Mortgage**") covering a parcel of land owned by Landlord together with the improvements erected thereon (said parcel of land and improvements thereon being hereinafter referred to as the "**Shopping Center**" and being more particularly described on **Exhibit A** attached hereto and made a part hereof);

Landlord and Tenant entered into that certain lease dated March 20, 2014 (said lease, together with all amendments, substitutions, replacements and renewals thereto from time to time, collectively the "**Lease**"), pursuant to which Landlord leased to Tenant a portion of the Shopping Center more particularly described in the Lease (the "**Demised Premises**");

Lender received a copy of the Lease and hereby acknowledges such receipt;

Article XV of the Lease provides that the Lease shall become subject and subordinate to a mortgage encumbering the fee interest of Landlord in and to the Shopping Center if and when a non-disturbance agreement is entered into with respect to such mortgage; and

The Parties desire to effect the subordination of the Lease to the Mortgage and to provide for the non-disturbance of Tenant.

AGREEMENTS:

In consideration of the foregoing Recitals, the mutual covenants, agreements and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. LEASE CONSENT. Lender consents to and approves the Lease and the terms, including the options to extend as set forth in the Lease, and covenants and agrees that the exercise by Tenant of any of the rights, remedies and options in the Lease shall not constitute a default under this Agreement or the Mortgage.

2. **SUBORDINATION.** Tenant agrees that, subject to the terms of this Agreement, the Lease is made, and shall continue hereafter, to be subordinate to the lien of the Mortgage, as the same may be modified from time-to-time; provided, however, no such modification shall diminish Tenant's rights or increase Tenant's obligations under the Lease or this Agreement. The subordination of the Lease shall be conditioned and contingent upon Section 3 of this Agreement.

3. **NON-DISTURBANCE.** Lender agrees that so long as the Lease shall be in full force and effect, and so long as Tenant shall not be in default under the Lease beyond any applicable notice and cure period:

(a) Tenant shall not be named or joined as a party or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage, the bond, note or other obligation secured thereby, except to the extent required by applicable law;

(b) The possession by Tenant of the Demised Premises or the Shopping Center and Tenant's rights thereto shall not be disturbed, affected or impaired, nor will the Lease or the term thereof, including any extensions or renewals thereof if Tenant elects or has elected to exercise its options to extend the term ("**Lease Term**") be terminated or otherwise affected in any manner, including, without limitation, by:

(i) any suit, action or proceeding brought upon the Mortgage, bond, note or other obligation secured thereby, or for the foreclosure of the Mortgage or the exercise or enforcement of any rights of Lender under the Mortgage, any other documents or as a matter of law or equity, including, without limitation, bankruptcy law, or by any judicial sale, execution, or other sale or conveyance of the Demised Premises or the Shopping Center by Landlord or its successor in interest or title after foreclosure, or any deed given to Lender, whether in lieu of foreclosure or otherwise, (all of the foregoing collectively, "**Sale or Proceeding**") or

(ii) any default under the Mortgage, bond, note or other obligation secured thereby.

(c) All condemnation awards and insurance proceeds paid or payable with respect to the Demised Premises or any other part of the Shopping Center shall be applied and paid in the manner set forth in the Lease.

4. **ATTORNMEN**T. If Lender shall become the mortgagee in possession, or if Lender or any purchaser or transferee shall succeed to the interests of Landlord under the Lease or become the owner of or acquire the right to possession of the Demised Premises or the Shopping Center by reason of any Sale or Proceeding, then in any such event, the Lease shall continue in full force and effect, without the necessity of executing any new lease, as a direct lease between Tenant and the then owner, successor in interest or title of the Demised Premises or the Shopping Center, or Lease, as "landlord", upon all of the same terms and conditions contained in the Lease and this Agreement, and in such event:

(a) Tenant shall be bound to Lender under all of the terms and conditions of the Lease for the remainder of the Lease Term and Tenant hereby agrees to attorn and to recognize Lender as "landlord" under the Lease, such attornment to be effective and self-operative without the execution of any further instrument;

(b) Notwithstanding anything to the contrary contained herein, Tenant will be under no obligation to pay Rent to Lender until Tenant receives written notice from Lender that Lender has succeeded to the interest of "landlord" under the Lease;

(c) The respective rights and obligations of Tenant and Lender upon such attornment will, to the extent of the then remaining balance of the Lease Term, shall be the same as now set forth therein, it being the intention of the Parties hereto for this purpose to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length herein; and

(d) Lender shall be bound to Tenant under all of the terms and conditions of the Lease for the remainder of the Lease Term, which Lender hereby agrees to assume and perform and Tenant shall, from and after the date Lender succeeds to the interest of "landlord" under the Lease, have the same remedies against Lender for the breach of any terms and conditions contained in the Lease that Tenant might have had under the Lease against Landlord if Lender had not succeeded to the interest of "landlord"; provided, however, that Lender shall not be:

(i) liable for any act or omission of any prior landlord (including Landlord) unless such act or omission continues from and after the date upon which Lender succeeds to the interest of Landlord or during a period of time, which Lender is receiving Rent from Tenant;

(ii) subject to any defenses which Tenant may have against any prior landlord (including Landlord) unless resulting from any default or breach by such prior landlord or Landlord which continues from and after the date upon which Lender succeeds to the interest of Landlord or during a period of time which Lender is receiving Rent from Tenant;

(iii) subject to any offsets which Tenant may have against any prior landlord (including Landlord), except to the extent that (A) such offsets are expressly provided for under the Lease and Lender has received notice thereof as provided in Section 6 below, whether or not Lender elected to cure or remedy the act or omission or (B) such offsets were deducted by Tenant prior to the date upon which Lender succeeds to the interest of Landlord;

(iv) bound by any Rent which Tenant might have paid for more than one month in advance of its due date under the Lease to any prior landlord (including Landlord), (A) except for credits due Tenant pursuant to any monthly payments paid in advance (such as, for example, CAM, insurance or real estate taxes), or (B) unless such Rent is paid in accordance with the applicable provisions of the Lease; or

(v) bound by any previous amendment or modification of the Lease made without its consent, to the extent such amendment or modification materially decreases the rent payable by Tenant or materially increases Landlord's obligations; provided, however, notwithstanding the foregoing, no consent of Lender shall be required for any amendment or modification that relates to an amendment or modification specifically provide for in the Lease (such as an amendment to the Lease confirming the measurement of the Demised Premises).

(e) Tenant's obligations hereunder shall be effective only so long as Lender is bound to Lender's obligations hereunder.

5. **ASSIGNMENT OF RENTS.** If Lender enforces any assignment of rents clause contained in the Mortgage or in any other instrument securing the loan, Landlord hereby irrevocably authorizes Tenant to make Rent and any other payments due under the Lease to Lender upon demand of and notice to Tenant and without any duty of inquiry and Tenant shall be credited and discharged under the Lease for any such payments. Lender and Landlord will indemnify and hold Tenant harmless from any claims arising out of Tenant's paying Rent due under the Lease, to Lender or by complying with the assignment of rents clause or similar right.

6. **DEFAULT NOTICE TO LENDER.** Tenant will notify Lender simultaneously with notice to Landlord of any default by Landlord, which would give Tenant the right to terminate the Lease or to abate or reduce Rent payable thereunder. However, failure to give notice to Lender shall in no way whatsoever alter or affect Tenant's rights and remedies for any defaults by Landlord and shall not subject Tenant to any claims by Lender. Tenant agrees that Lender shall have the right to cure Landlord's default. However, notwithstanding anything herein to the contrary, Lender shall have no greater period of time than that given to Landlord under the Lease to cure such default.

7. **TENANT'S PROPERTY.** Neither the Mortgage nor any other security instrument executed in connection therewith shall encumber or be construed as subjecting in any manner to the lien thereof, any trade fixtures, signs or other personal property at any time furnished or installed by or for Tenant or its subtenants or licensees at the Demised Premises or the Shopping Center regardless of the manner or mode of attachment thereof.

8. **NOTICES.** Any notices of communications given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, or by Federal Express, Airborne or other overnight courier service, addressed as follows, or such other address or persons as any Party may designate by notice in the manner set forth herein:

(a) if to Lender, at the address of Lender as hereinabove set forth with duplicate copies to _____,

(b) if to Landlord, at the address of Landlord as hereinabove set forth with duplicate copies to _____,

(c) if to Tenant, at the address of Tenant as hereinabove set forth, with a duplicate copy to Legal Department, Dick's Sporting Goods, Inc., 345 Court Street, Coraopolis, PA 15108.

(d) All notices given in accordance with the provisions of this Section shall be effective upon receipt (or refusal of receipt) at the address of the addressee.

9. **BINDING EFFECT.** This Agreement shall inure to the benefit of and be binding upon and enforceable by the Parties hereto, any sublessees, licensees and any purchaser of the Demised Premises and/or of the Shopping Center and any of their respective heirs, executors, personal representatives, successors and assigns. The term "**Lender**" as used herein shall be deemed to include Lender, any holders of the Mortgage, including but not limited to any person or entity who shall succeed to Landlord's or Lender's title or interest by any Sale or Proceeding, and any of their respective heirs, executors, representatives, successors and assigns.

10. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the Parties superseding any prior agreements and representations of the Parties with respect to the subject matter herein, and cannot be changed, modified, waived or canceled except by an agreement in writing executed by the Party against whom enforcement of such modification, change, waiver or cancellation is sought.

11. **EFFECTIVE DATE.** The effective date of this Agreement will be the date of execution by the last Party to sign this Agreement provided an executed copy of this Agreement is thereafter delivered to all other Parties to this Agreement.

12. **RECORDING.** This Agreement shall be recorded in the public records of the county(ies) in which the Demised Premises and the Shopping Center are located. This Agreement, the Lease and all the terms, covenants, conditions and restrictions herein contained are intended to run and shall run with and bind all lands, the Demised Premises and the Shopping Center (including the improvements thereon) affected hereby.

13. **SEVERABILITY.** In the event any term or provision of this Agreement shall be declared invalid, void or unenforceable it shall not affect the validity of any other term and provision hereof, all which shall remain valid, binding and enforceable.

14. **COUNTERPARTS.** This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which together shall constitute one document.

15. **INTERPRETATION.** Captions and headings of sections shall not be deemed to affect the meaning of any provisions of this Agreement. Capitalized terms used herein and not defined herein shall have the meaning set forth in the Lease.

NOTE: THIS AGREEMENT BY TENANT SHALL NOT BE EFFECTIVE UNLESS AND UNTIL ANY PRIOR MORTGAGES ON THE DEMISED PREMISES OR SHOPPING CENTER HAVE BEEN SATISFIED SO THAT TENANT'S PRIOR

**AGREEMENTS TO ATTORN TO SAID MORTGAGES AND/OR TO SUBORDINATE
ITS LEASE TO SAID MORTGAGES SHALL HAVE BEEN EXTINGUISHED.**

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Subordination, Non-Disturbance and Attornment Agreement as of the date set forth above.

WITNESSES:

S: L
Name: _____

Tyler K. L
Name: _____

WITNESSES:

Donald L. Litch
Name: _____

Donald Litch
Name: _____

WITNESSES:

Michelle Palmieri
Name: Michelle Palmieri

Amy C. Smith
Name: Amy C. Smith

LANDLORD:

BURLINGTON RETAIL, LLC,
a Washington limited liability company

By: SHDP Associates, LLC, Manager

By: SHD Associates, LLP, Manager

By: Mack H. DUBOSE
Name: MAC H. DUBOSE
Title: MEMBER / PARTNER

LENDER:
HERITAGE BANK

By: Kai Antrim
Name: Kai Antrim
Title: Lender

TENANT:
DICK'S SPORTING GOODS, INC.,
a Delaware corporation

By: Lee J. Detsky
Name: Lee J. Detsky
Title: EVP - CFO

me

STATE OF WASHINGTON)

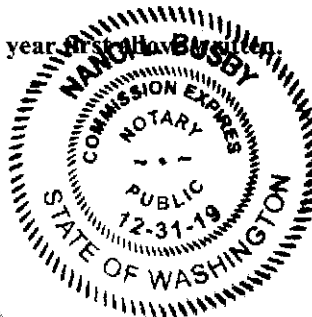
ACKNOWLEDGMENT -L.L.C.

COUNTY OF Franklin)

On this 16th day of June, 2017, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Mack H Dubose, to me known to be the General Partner of SHD Associates, LLP who is the Member of SHDP Associates, LLC who is the Member of Burlington Retail, LLC, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath state that they are authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.

[Signature]
Notary Public in and for the State of Washington
My appointment expires 6-30-19



STATE OF WASHINGTON)

ACKNOWLEDGMENT -Corporate

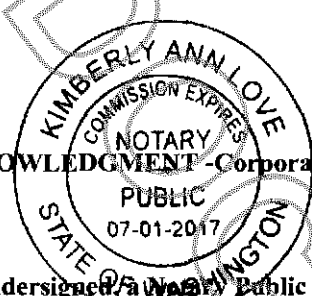
COUNTY OF SNOHOMISH)

On this 5 day of June, 2017, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Karl Antrun to me known to be the V.P. of Heritage Bank the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath state that he is authorized to execute the said instrument and that the seal affixed (if any) is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

[Signature: Kimberly Ann Love]
Notary Public in and for the State of Washington

My appointment expires 7/1/2017



COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF ALLEGHENY)

On this 1 day of June, 2017, before me personally came Lee J. Belitsky
to me personally known, who, being by me duly sworn, did depose and say that he resides in
Pittsburgh, Pennsylvania, that he is CEO of Dick's Sporting Goods, Inc., the
corporation described in and that executed the within instrument, and he acknowledged to me
that having been duly authorized to do so, he executed the same on behalf of and in the name of
said corporation.

Witness my hand and Notarial Seal this 1 day of June, 2017.

Kristen L. Boscarino
Notary Public
Kristen L. Boscarino
(Printed Name)

My Commission Expires: 12/6/2020
My County of Residence: Allegheny

After recording, return to:

Attn: Legal Department
Dick's Sporting Goods, Inc.
345 Court Street
Coraopolis, PA 15108

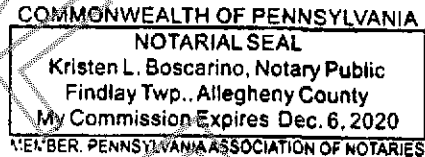


EXHIBIT "A"
LEGAL DESCRIPTION

LOT 1 AS DELINEATED ON SPORTSMANS PLAZA BINDING SITE PLAN, AS APPROVED ON DECEMBER 22, 2005 AND RECORDED ON JANUARY 13, 2006 UNDER AUDITOR'S FILE NO. 200601130002, TOGETHER WITH THAT PORTION CONVEYED UNDER AUDITOR'S FILE NO. 200611090022 AND EXCEPT THAT PORTION CONVEYED UNDER AUDITOR'S FILE NO. 200611090023.