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Riverton, UT

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Brian D. Cunningham, Esq.  
SNELL & WILMER L.L.P.  
Gateway Tower West  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101

APN: 27-31-351-001-0000

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11/14/2019 04:25 PM \$40.00  
Book - 10860 Pg - 2332-2341  
RASHELLE HOBBS  
RECORDER, SALT LAKE COUNTY, UTAH  
TINA TERMYNA  
1830 ROUTE 130 N  
BURLINGTON NJ 08016  
BY: DSP, DEPUTY - MA 10 P.

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of this 31<sup>st</sup> day of January, 2019, by and among U.S. BANK NATIONAL ASSOCIATION, a national banking association, as Administrative Agent ("Agent") for the lenders now or hereafter party to the loan agreement referred to below (collectively with Agent, "Beneficiary"), BURLINGTON COAT FACTORY WAREHOUSE CORPORATION, a Florida corporation ("Tenant"), and RIVERTON CENTERCAL, LLC, a Delaware limited liability company ("Landlord").

**RECITALS**

A. Pursuant to a Construction Loan Agreement between Beneficiary and Landlord, Beneficiary has made or intends to make a construction loan ("Loan") to Landlord secured by a Construction Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (as amended, the "Deed of Trust") encumbering the real property (the "Property") in Salt Lake County, Utah owned in fee simple by Landlord and described on Exhibit A hereto.

B. By a Lease Agreement dated June 27, 2018 (the "Lease"), Landlord leased to Tenant those certain premises (the "Premises") which constitutes or forms a portion of the Property encumbered by the Deed of Trust, all as more particularly described in said Lease.

C. The Deed of Trust constitutes an assignment to Beneficiary of all Landlord's right, title, and interest under the Lease. Beneficiary, Landlord and Tenant have agreed to the following with respect to their mutual rights and obligations pursuant to and under the Lease and the Deed of Trust.

**AGREEMENT**

NOW, THEREFORE, In consideration of the above, the reciprocal promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do mutually agree as follows:

1. Subordination. The Lease now is or shall become upon the mutual execution of this Agreement subordinate in all respects to the Deed of Trust and to all renewals, modifications and extensions thereof, subject to the terms and conditions of this Agreement. Beneficiary acknowledges receipt of a copy of the Lease and hereby approves the same.

2. Non-Disturbance. So long as Tenant is not in default under the Lease (beyond any period given Tenant to cure such default) as would entitle Landlord to exercise its termination rights and remedies set forth in Article 22 [Other Defaults by Tenant] of the Lease, Beneficiary agrees that it will not disturb the peaceful and quiet possession or right of possession, use or occupancy of the Premises by Tenant nor shall the Lease or its appurtenances be extinguished by reason of any Foreclosure (as hereinafter defined) or otherwise, nor join Tenant as a party in any action or proceeding brought pursuant to the Deed of Trust.

3. Attornment. In the event that Beneficiary or its successors or assigns, or any purchaser of the Property at a foreclosure sale ("Successor Landlord"), acquires the interest of Landlord or comes into the possession of or acquires title to the Premises (the "Succession") by reason of the foreclosure (judicial or non-judicial) or enforcement of the Deed of Trust (including a private power of sale) or by a conveyance in lieu thereof (any or all of the foregoing hereinafter referred to as a "Foreclosure"), then the Lease and all appurtenances thereto shall remain in full force and effect and Tenant shall be bound to Successor Landlord under all of the provisions of the Lease for the balance of the term thereof (including any extensions or renewals thereof which may be effected in accordance with any options contained in the Lease) with the same force and effect as if Successor Landlord was Landlord under the Lease, and Tenant shall attorn to Successor Landlord as its landlord, such attornment to be effective and self-operative, without the execution of any further instruments on the part of either of the parties hereto, immediately upon the Succession; and further, in such event, Successor Landlord shall be bound to Tenant under all of the provisions of the Lease, and Tenant shall, from and after such Succession, have the same remedies against Successor Landlord for the breach of any agreement contained in the Lease that Tenant might have had under the Lease against Landlord thereunder, provided, however, that if Successor Landlord is not an entity that controls, is controlled by, or is under common control with Landlord, then Successor Landlord shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord) unless Tenant shall have given notice (pursuant to Paragraph 4 hereof) of such act or omission to Agent (whether or not Agent elected to cure or remedy such act or omission); or

(b) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord) unless Tenant shall have given notice (pursuant to Paragraph 4 hereof) of the state of facts or circumstances under which such offset or defense arose to Agent (whether or not Agent elected to cure or remedy such condition); or

(c) bound by any rent or additional rent which Tenant might have paid to any prior landlord (including Landlord) more than one (1) month in advance of the due date under the Lease, unless such rent or additional rent is available to the party who was the holder of the Deed of Trust at the time of a Foreclosure; or

(d) bound by any security deposit which Tenant may have paid to any prior landlord (including Landlord), unless such deposit is available to the party who was the holder of the Deed of Trust at the time of a Foreclosure; or

(e) bound by any amendment or modification of the Lease hereafter made, without the written consent of Agent, which consent shall not be unreasonably withheld, conditioned or delayed, which: (i) reduces the minimum rent payable under the Lease; (ii) changes the date upon which the term of the Lease would otherwise end to an earlier date; or (iii) more than insignificantly increases Landlord's obligations or decreases Landlord's rights under the Lease or more than insignificantly increases Tenant's rights under the Lease or decreases Tenant's obligations under the Lease (each a "Material Modification"); provided, however, that consent shall not be required to the extent the Lease is amended or modified pursuant to a right granted to Tenant in the Lease or is not a Material Modification.

Tenant shall be under no obligation to pay rent to Beneficiary or Successor Landlord until Tenant receives written notice from Agent or Successor Landlord stating that Beneficiary or Successor Landlord is entitled to receive the rents under the Lease directly from Tenant and such obligation will commence twenty (20) days after receipt of such written notice. Landlord, by its execution hereof, hereby authorizes Tenant, to accept such direction from Agent or Successor Landlord and to pay the rents directly to Beneficiary or Successor Landlord regardless of any other contrary notice or instruction and waives all claims against Tenant for any sums so paid at Beneficiary's or Successor Landlord's direction. Tenant may conclusively rely upon any written notice Tenant receives from Beneficiary or Successor Landlord notwithstanding any claims by Landlord contesting the validity of any term or condition of such notice, including any default claimed by Beneficiary or Successor Landlord, and Tenant shall have no duty to inquire into the validity or appropriateness of any such notice. Any payment made by Tenant to Lender or in response to Lender's written demand shall be deemed proper payment by Tenant of such sum pursuant to the Lease.

4. Landlord's Default. From and after the date Tenant receives a fully executed copy of this Agreement, Tenant will not seek to terminate the Lease or exercise any right of offset under the Lease by reason of any act or omission of Landlord until Tenant shall have given written notice of such act or omission to Agent (at Agent's address provided for in this Agreement) and Agent shall have the right, but not the obligation, to remedy such act or omission within thirty (30) days after the date of such notice, provided however that if the act or omission does not involve the payment of money from Landlord to Tenant and is of such a nature that it could not be reasonably remedied within the thirty (30) day period aforesaid, then Beneficiary shall have such further time as is reasonable under the circumstances to effect such remedy provided that Beneficiary shall notify Tenant, within ten (10) days after receipt of Tenant's notice, of Beneficiary's intention to effect such remedy and provided further that Beneficiary commences such remedy within said thirty (30) day period and thereafter prosecutes said remedy with due diligence and continuity to completion. Notwithstanding the foregoing, Agent shall have no rights under this Paragraph 4 if Agent is an entity that controls, is controlled by, or is under common control with Landlord. Tenant's failure to provide notice to Agent pursuant to this Paragraph 4 shall not be deemed a default by Tenant under this Agreement, but shall be deemed ineffective as to Beneficiary until given.

5. Agreement to Release Proceeds or Awards.

(a) Destruction. In the event of a casualty at the Premises, subject to satisfaction of any conditions in the Deed of Trust to Landlord's use of insurance proceeds, Beneficiary shall release such insurance proceeds to Landlord in accordance with the Deed of Trust. Beneficiary acknowledges that it has no interest and waives any interest in Tenant's personal property, Tenant's signs, the satellite dish, and any safety systems (such as, without limitation, fire and security monitoring and alarm systems) installed at or about the Premises, or any insurance proceeds which are payable with respect thereto under either Landlord's or Tenant's policies.

(b) Eminent Domain. In the event of a public taking or act of eminent domain, Beneficiary shall release its interest in that portion of the award to which Tenant is entitled pursuant to the Lease.

6. Other Tenant Covenants. Tenant further agrees with Beneficiary as follows:

(a) Tenant will not enter into any Material Modification of the Lease or consent to any termination of the Lease (except a termination permitted by the Lease without Landlord's consent) without Agent's prior written consent in each instance, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that consent shall not be required to the extent the Lease is amended or modified pursuant to a right granted to Tenant in the Lease or is not a Material Modification.

(b) Except as otherwise required or permitted under the Lease, Tenant will not prepay any rents or other sums due under the Lease for more than one (1) month in advance of the due date.

(c) If the Lease is rejected or deemed rejected in any bankruptcy proceeding with respect to Landlord, Tenant shall not exercise its option to treat the Lease as terminated under 11 U.S.C. § 365(h), as amended.

7. Notices. In order to be effective, any notice to be given under this lease must be in writing and either (1) served personally at the following applicable notice address, provided that proof of delivery thereof can be produced; or (2) sent by registered or certified U.S. mail, Federal Express or a similar reputable express courier the following applicable notice address, provided that proof of delivery thereof can be produced.

To Agent or Beneficiary:

U.S. Bank National Association  
Commercial Real Estate  
633 W. Fifth Street, 29<sup>th</sup> Floor  
Los Angeles, CA 90071  
Attention: Jerry Lynch

*With a copy to:*

Snell & Wilmer L.L.P.  
15 West South Temple, Suite 1200  
Salt Lake City, UT 84101  
Attention: Brian D. Cunningham, Esq.

To Tenant:

Burlington Coat Factory Warehouse Corporation  
1830 Route 130 North  
Burlington, NJ 08016  
Attention: Lease Administration

*With a copy to:*

Burlington Coat Factory Warehouse Corporation  
1830 Route 130 North  
Burlington, NJ 08016  
Attention: Legal Department

To Landlord:

Riverton CenterCal, LLC  
1600 East Franklin Avenue  
El Segundo, CA 90245  
Attention: Jean Paul Wardy

No notice delivered to the Premises shall be effective. Any party may change the address by written notice to the other parties clearly stating such party's intent to change the address for all purposes of this

Agreement, which new address shall be effective one (1) month after receipt. Except as hereinafter provided, notice shall be deemed given when received or when receipt is refused.

8. Lease Status. Tenant represents that it has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Premises or the Property, or any portion thereof or any interest therein, and to the extent that Tenant has had, or hereafter acquires, any such right or option, same is hereby acknowledged to be subject and subordinate to the Deed of Trust and is hereby waived and released as against Beneficiary.

9. General Provisions. This Agreement may not be modified except in writing and executed by the parties hereto or their successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, such provision shall be considered severed from the rest of this Agreement and the remaining provisions shall continue in full force and effect as if such provision had not been included. This Agreement may be signed in counterparts. This Agreement shall be governed by the laws of the State of Utah.

10. Effectiveness. This Agreement shall not be effective unless executed by all of the parties hereto and shall not be binding on Tenant unless Tenant has received a fully-executed duplicate original of this Agreement.

*[Signatures on following pages]*

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first written above.

"Agent"

U.S. BANK NATIONAL ASSOCIATION, a national banking association

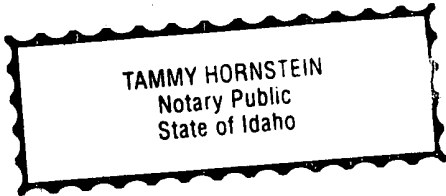
By: [Signature]  
Name: MARY BETH WYN LONG  
Title: SR VICE PRESIDENT

State of Idaho )  
County of Ada : ss.

On this 2nd day of July, in the year of 2018, before me, Tammy Hornstein, a notary public, personally appeared Mary Kathryn Long known or identified to me to be a Sr. Vice President of U.S. BANK NATIONAL ASSOCIATION, a national banking association, the national banking association that executed this instrument and the person who executed this instrument on behalf of said national banking association, and acknowledged to me that such national banking association executed the same.

IN WITNESS WHEREOF, I have set my hand and seal the day and year as above written.

[Seal]



[Signature]  
Notary Public for State of Idaho  
My Commission Expires on 11/10/2020

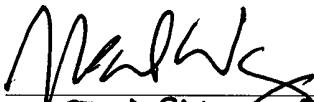


"Landlord"

RIVERTON CENTERCAL, LLC, a Delaware limited liability company

By: CenterCal, LLC, a Delaware limited liability company, its Managing Member

By: CenterCal Associates, LLC, a Delaware limited liability company, its Manager

By:   
Name: JEAN PAUL WADBY  
Title: PRESIDENT



ACKNOWLEDGMENT

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.

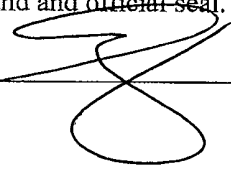
State of California \_\_\_\_\_ )  
County of Los Angeles \_\_\_\_\_ )ss

On July 2, \_\_\_\_\_, 2018, before me, Eva Yoguez, \_\_\_\_\_ Notary Public, personally appeared Jean Paul Wardy \_\_\_\_\_, 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.

Signature \_\_\_\_\_ (Seal)



\_\_\_\_\_  
(Serial number, if any)

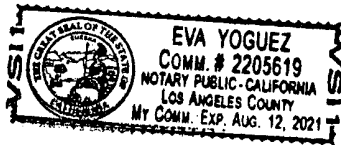


EXHIBIT A

Legal Description of Property

The real property located in the County of Salt Lake, State of Utah and described as follows:

Beginning at a point on the east right-of-way line of the Mountain View Corridor for the Utah Department of Transportation project no. MP-0182(6) as described in a Quit Claim Deed recorded July 15, 2014 in book 10245 at page 5268 in the Salt Lake County Recorder's Office, said point also being South 89°34'03" East, along the Section Line, 534.33 feet and North 00°25'57" East 136.72 feet from the Southwest Corner of Section 31, Township 3 South, Range 1 West, Salt Lake Base and Meridian and running thence along said east right-of-way line the following five (5) courses: (1) North 15°19'40" West 67.94 feet, (2) North 02°30'46" East 553.12 feet, (3) North 12°02'08" East 266.84 feet, (4) North 05°07'17" West 269.61 feet, (5) North 03°33'19" West 6.27 feet; thence South 89°25'15" East 1348.84 feet; thence South 00°34'50" West 889.12 feet to a point on a 100.00 foot radius curve to the left; thence Southerly 11.38 feet along said curve, through a central angle of 06°31'15", (chord bears South 02°40'47" East 11.37 feet); thence South 05°56'24" East 59.05 feet to a point on a 100.00 foot radius curve to the right; thence Southerly 11.38 feet along said curve, through a central angle of 06°31'15", (chord bears South 02°40'47" East 11.37 feet); thence South 00°34'50" West 167.69 feet to the north right-of-way line of 13400 South Street as described in a Quit Claim Deed recorded March 19, 2012 in book 10000 at page 4080 in the Salt Lake County Recorder's Office; thence along said north right-of-way line the following five (5) courses: (1) South 89°48'13" West 92.78 feet (2) South 00°11'47" East 39.61 feet, (3) South 45°01'09" West 56.85 feet, (4) North 89°33'54" West 348.39 feet to a point on a 5861.83 foot radius curve to the right, (5) Northwesterly along said curve 141.13 feet, through a central angle of 01°22'46", (chord bears North 88°52'31" West 141.13 feet), to the north right-of-way line of 13400 South Street as described in a Quit Claim Deed recorded May 11, 2010 in book 9824 at page 7738 in the Salt Lake County Recorder's Office; thence along said north right-of-way line the following ten (10) courses: (1) North 84°42'01" West 92.10 feet, (2) North 05°00'00" East 6.45 feet, (3) North 85°00'00" West 58.96 feet, (4) South 05°00'00" West 6.45 feet, (5) North 86°05'31" West 78.08 feet, (6) North 87°11'25" West 78.08 feet, (7) North 88°13'22" West 68.71 feet, (8) North 89°11'32" West 69.14 feet, (9) North 89°40'21" West 90.78 feet, (10) North 78°25'02" West 230.08 feet to the Point of Beginning.

APN# 27-31-351-001-000