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Doc#: 1233833094 Fee: \$84.00
Karen A. Yarbrough RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/03/2012 11:45 AM Pg: 1 of 8

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COVER PAGE TO SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Prepared by & mail to
Sharsberg Jacobs
Joel Scatito
307 S. Wacker
Suite 2750
Chicago

Box 400-CTCC

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P 8
S A
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INT AB

UNOFFICIAL COPY**FOOT LOCKER RETAIL, INC.**

112 WEST 34TH STREET, NEW YORK, NY 10120
 TEL: (212) 720-3700 / FAX: (212) 720-4379

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT (this "Agreement"), made as of the 13 day of Nov, 2012 between Foot Locker Retail, Inc., f/k/a Venator Group Retail, Inc., d/b/a Foot Locker #8502, having an address at c/o Foot Locker Realty, Inc., 112 West 34th Street New York, New York 10120 ("Tenant") and The Privatebank and Trust Company, having an address at 120 South LaSalle Street, Chicago, IL 60602, Attention: Alison M. Buckley ("Mortgagee").

WITNESSETH:

WHEREAS, Mortgagee will be the holder of a certain Mortgage, Deed of Trust or Deed ("Mortgage"), executed and delivered by Midway Square Shopping Center, LLC, successor-in-interest to LaSalle Bank National Association, as successor Trustee to American National Bank and Trust Company, under Trust Agreement dated October 1, 1986 and known as Trust No. 100226-06 ("Landlord"), and which Mortgage will convey and constitute a lien on a certain estate and interest in and to the premises more particularly described in the Mortgage (the "Mortgaged Premises"); and

WHEREAS, Tenant has entered into a certain lease dated July 31, 2001 (said lease as heretofore amended and supplemented is hereinafter called the "Lease"), with Landlord demising space in the Center constructed on the Premises known as Midway Square Shopping Center, Tupelo, MS (the "Premises"); and

WHEREAS, Mortgagee has agreed to recognize the status of Tenant under the Lease and Tenant has agreed to attorn to Mortgagee, upon and subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually covenant and agree as follows:

1. The Lease and any extensions, renewals, replacements or modifications made after the date hereof, and all of the right, title and interest of Tenant in and to the Premises are and shall be subject and subordinate to the Mortgage and to all of the terms, covenants and conditions contained therein, and to any renewals, modifications, replacements, considerations and extensions thereof.
2. Provided that there is then no continuing default under the Lease and no event has occurred and no condition exists which entitle Landlord to terminate the Lease under its terms or would cause without any further action by Landlord, the termination of the Lease, or would entitle Landlord to dispossess Tenant from the Premises, Mortgagee agrees that (a) in the event of foreclosure of the Mortgage, Tenant shall not be named as a party in any action or proceeding to enforce the Mortgage, (b) in the event Mortgagee comes into possession or acquires title to the

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Premises as a result of the enforcement or foreclosure of the Mortgage, or as a result of any other means, Mortgagee agrees that Tenant shall not be disturbed in its possession or occupancy of the Premises and (c) Mortgagee will recognize the Lease and Tenant's rights thereunder.

3. Upon any foreclosure of the Mortgage or other acquisition of the Premises, Tenant shall attorn to Mortgagee or any other party acquiring said property or so succeeding to Landlord's rights and shall recognize Mortgagee as its landlord under the Lease and Tenant shall promptly execute and deliver any instrument that Mortgagee may reasonably request in writing to evidence further said attornment.

4. Upon such foreclosure of the Mortgage or other acquisition of the Mortgaged Premises and attornment, the Lease shall continue as a direct lease between the Mortgagee and Tenant upon all terms, covenants and conditions thereof as are then applicable except that the Mortgagee shall not be (a) liable for any action or omission of any prior landlord under the Lease unless Mortgagee has received notice thereof, (b) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord, or (c) liable for the return of any security deposit which Tenant may have paid to any prior landlord, unless Mortgagee shall have actually received such deposit, or (d) bound by any material amendment and/or modification of the Lease including, without limitation, one that shortens the initial term or reduces the rent, made without Mortgagee's prior written consent. Tenant further agrees with Mortgagee that Tenant will not voluntarily subordinate the Lease to any lien or encumbrance without Mortgagee's prior written consent.

5. If Landlord shall default in the performance or observance of any of the terms, covenants, conditions or agreements in the Lease to be performed on the part of Landlord, Tenant shall give written notice thereof to Mortgagee, provided Landlord provides Tenant with such Mortgagee's address, and Mortgagee shall have the right (but not the obligation) to cure such default. Tenant shall not take any action with respect to any default by Landlord under the Lease, including, without limitation, any action to terminate, rescind or avoid the Lease or to withhold any rental thereunder, for a period of thirty (30) days after receipt by Mortgagee of Tenant's written notice with respect to such default; provided, however, that in the case of any default which cannot with reasonable diligence be cured within such thirty (30) day period, if Mortgagee shall proceed promptly to commence to cure such default and, thereafter, shall prosecute the curing of same with reasonable diligence, then the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of same but not to exceed one hundred twenty (120) days.

6. This Agreement shall bind and inure to the benefit of the parties hereto, their successors and assigns. As used herein, (a) the term "Tenant" shall include any, successors and/or assigns of Tenant named herein; (b) the words "foreclosure" and "foreclosure sale" shall be deemed to include the acquisition of Landlord's estate in the Premises by voluntary deed (or assignment) in lieu of foreclosure; and (c) the word "Mortgagee" shall include the Mortgagee herein specifically named and any of its successors and assigns, and shall include anyone or any entity who shall have succeeded to Landlord's interest in the Premises by, through or under foreclosure of the Mortgage or as a result of any other means.

7. Anything herein or in the Lease to the contrary notwithstanding, in the event that Mortgagee shall acquire title to the Premises, Mortgagee shall have no obligation, nor incur any liability, beyond Mortgagee's then interest, if any, in the Premises and Tenant shall look exclusively to such interest of Mortgagee, if any, in the Premises for the payment and discharge of any obligations imposed upon Mortgagee hereunder or under the Lease and Mortgagee is

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hereby released or relieved of any other liability hereunder and under the Lease. Tenant agrees that with respect to any money judgment which may be obtained or secured by Tenant against Mortgagee, Tenant shall look solely to the estate or interest owned by Mortgagee in the Premises and Tenant will not collect or attempt to collect any such judgment (i) from any officer, director, shareholder, partner, employee, agent or representative of Mortgagee or (ii) out of any assets of Mortgagee other than Mortgagee's estate or interest in the Premises or the proceeds from the sale thereof.

8. Wherever used herein, the singular shall include both the singular and the plural and the use of any gender shall apply to all genders.

9. This Agreement shall be governed by and construed in accordance with the laws of the State where the Premises is located, applicable to similar agreements made and to be performed entirely within said State. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing this Agreement to be drafted.

10. This Agreement shall not be modified or amended except in writing signed by all parties hereto.

11. All notices and other communications provided for hereunder shall be in writing and mailed (registered or certified mail, return receipt requested, postage prepaid), hand delivered, sent by nationally recognized overnight courier (prepaid), if to Mortgagee, at its address above stated, and if to Tenant, at its address above stated, Attn: Director Lease Administration. All notices and such communications shall be effective when received at the address specified as aforesaid.

12. Each entity executing and delivering this Agreement represents and warrants to the other(s) that the individuals executing this Agreement on behalf of such entity are duly empowered and authorized to do so on behalf of such entity.

IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement as of the day and year first above written.

TENANT: FOOT LOCKER RETAIL, INC.

By: 

Name: Steven Spiegel

Title: Director of Leasing Services

MORTGAGEE:

By: _____

Name:

Title:

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hereby released or relieved of any other liability hereunder and under the Lease. Tenant agrees that with respect to any money judgment which may be obtained or secured by Tenant against Mortgagee, Tenant shall look solely to the estate or interest owned by Mortgagee in the Premises and Tenant will not collect or attempt to collect any such judgment (i) from any officer, director, shareholder, partner, employee, agent or representative of Mortgagee or (ii) out of any assets of Mortgagee other than Mortgagee's estate or interest in the Premises or the proceeds from the sale thereof.

8. Wherever used herein, the singular shall include both the singular and the plural and the use of any gender shall apply to all genders.

9. This Agreement shall be governed by and construed in accordance with the laws of the State where the Premises is located, applicable to similar agreements made and to be performed entirely within said State. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing this Agreement to be drafted.

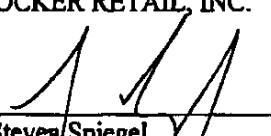
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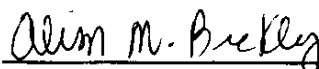
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TENANT: FOOT LOCKER RETAIL, INC.

By: 
Name: Steven Spiegel
Title: Director of Leasing Services

MORTGAGEE:

By: 
Name: Allison M. Buckley
Title: AMD

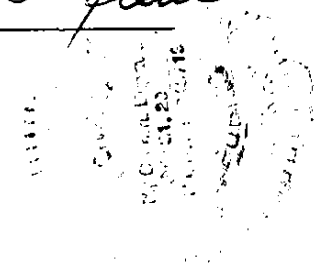


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STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

BE IT REMEMBERED, that on this 23 day of Oct. 2012, before me the subscriber named below, personally appeared Steven Spiegel, who I am satisfied is the person who signed the within instrument as Director of Leasing Services of FOOT LOCKER RETAIL, INC. a corporation of the State of NEW YORK, that the within instrument made by said corporation was signed and delivered by him as such officer and is the voluntary act and deed of the corporation, made by virtue of authority from its Board of Directors.

Notary Public *Andrew D. Stein*



STATE OF _____)
) ss:
COUNTY OF _____)

BE IT REMEMBERED, that on this _____ day of _____, 2012, before me the subscriber named below, personally appeared _____, who I am satisfied is the person who signed the within instrument as _____ of _____, a _____ bank, and he thereupon acknowledged that the within instrument made by said bank was signed and delivered by him as such officer and is the voluntary act and deed of the bank, made by virtue of authority from its Board of Directors.

Notary Public _____

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STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

BE IT REMEMBERED, that on this 23 day of Oct 2012, before me the subscriber named below, personally appeared Steven Spiegel, who I am satisfied is the person who signed the within instrument as Director of Leasing Services of FOOT LOCKER RETAIL, INC. a corporation of the State of NEW YORK, that the within instrument made by said corporation was signed and delivered by him as such officer and is the voluntary act and deed of the corporation, made by virtue of authority from its Board of Directors.

Notary Public *Arthur D. Stein*

STATE OF IL)
) ss:
COUNTY OF COOK)

BE IT REMEMBERED, that on this 9 day of November 2012, before me the subscriber named below, personally appeared Alison Buckley, who I am satisfied is the person who signed the within instrument as AMD of the Prudential an It's a Girl chevrolet bank, and he thereupon acknowledged that the within instrument made by said bank was signed and delivered by him as such officer and is the voluntary act and deed of the bank, made by virtue of authority from its Board of Directors.



Notary Public *[Signature]*

[Handwritten mark]

UNOFFICIAL COPY**EXHIBIT "A"****LEGAL DESCRIPTION OF THE PROPERTY****PARCEL 1**

THE WEST 1/4 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 11, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE SOUTH 772 FEET THEREOF AND EXCEPT THAT PART CONVEYED TO CHICAGO UNION TRANSFER COMPANY BY DEED DATED OCTOBER 26, 1891 AND RECORDED NOVEMBER 18, 1891 IN BOOK 376, PAGE 20, AS DOCUMENT NUMBER 1570421 DESCRIBED AS COMMENCING AT A POINT 33 FEET SOUTH OF THE NORTH LINE AND 69 FEET WEST OF THE EAST LINE THEREOF; THENCE WEST PARALLEL WITH AND 33 FEET FROM SAID NORTH LINE 232 FEET; THENCE SOUTH PARALLEL WITH AND 33 FEET FROM THE WEST LINE THEREOF 125 FEET; THENCE EAST PARALLEL WITH SAID NORTH LINE 134 FEET; THENCE NORTH PARALLEL WITH SAID WEST LINE 75 FEET; THENCE NORTHEASTERLY IN A STRAIGHT LINE 121 FEET TO THE POINT OF BEGINNING AND ALSO EXCEPTING THEREFROM THAT PART OF THE WEST 1/4 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 11, AFORESAID, LYING WEST OF A LINE 50 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SECTION 11 AS CONVEYED TO THE CITY OF CHICAGO BY QUIT CLAIM DEED RECORDED SEPTEMBER 23, 1932 AS DOCUMENT NUMBER 11144290.

AND

PARCEL 2

AN IRREGULAR PARCEL OF LAND IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 11, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE EAST LINE OF PULASKI ROAD AS THE SAME WAS WIDENED PURSUANT TO CONDEMNATION PROCEEDINGS IN CASE NO. 443985 SUPERIOR COURT OF COOK COUNTY, ILLINOIS, 142.04 FEET SOUTH OF THE NORTH LINE AND 50 FEET EAST OF THE WEST LINE OF SAID SOUTHWEST 1/4; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID PULASKI ROAD, SAID EAST LINE BEING 50 FEET EAST OF AND PARALLEL TO SAID WEST LINE A DISTANCE OF 15.96 FEET TO A POINT 158 FEET SOUTH OF THE NORTH LINE OF SAID SOUTHWEST 1/4; THENCE EAST ON A LINE 158 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF SAID SOUTHWEST 1/4, A DISTANCE OF 117.06 FEET; THENCE NORTH 75 FEET ON A LINE 167.06 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID SOUTHWEST 1/4; THENCE SOUTHWESTERLY IN A STRAIGHT LINE 131.11 FEET MORE OR LESS TO THE POINT OF BEGINNING ALL IN COOK COUNTY, ILLINOIS.

PIN: 19-11-300-007-0000

Address: 5109-55 S. Pulaski Rd., Chicago, Illinois