



Doc#: 1607529028 Fee: \$48.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 03/15/2016 03:19 PM Pg: 1 of 6

AFTER RECORDING, RETURN TO:

Berkadia Commercial Mortgage LLC
323 Norristown Road, Suite 300
Ambler, PA 19002
Attn: Client Relations Manager – Loan # 011056311

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

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

This Subordination, Non-Disturbance and Attornment Agreement ("**Agreement**"), is made as of this 21st day of January, 2016 among Wells Fargo Bank, National Association, not individually, but solely as Trustee for the Certificate Holders of Deutsche Mortgage and Asset Receiving Corporation., Commercial Mortgage Pass-Through Certificates, Series 2007-C9 under that certain Pooling and Servicing Agreement dated as of August 1, 2007 ("**Lender**"), by and through Berkadia Commercial Mortgage LLC, a Delaware limited liability company, its Master Servicer under said Pooling and Servicing Agreement, Kedzie Plaza 1, LLC, an Illinois limited liability company ("**Landlord**"), and FP Stores, Inc., a California corporation ("**Tenant**").

Background

A. Lender is the owner and holder of a deed of trust or mortgage or other similar security instrument (either, the "**Security Instrument**"), covering, among other things, the real property commonly known and described as Kedzie Plaza Shopping Center, and further described on Exhibit "A" attached hereto and made a part hereof for all purposes, and the building and improvements thereon (collectively, the "**Property**").

B. Tenant is the lessee under that certain lease agreement between Landlord and Tenant dated March 31, 2015 ("**Lease**"), demising a portion of the Property described more particularly in the Lease ("**Leased Space**").

C. Landlord, Tenant and Lender desire to enter into the following agreements with respect to the priority of the Lease and Security Instrument.

NOW, THEREFORE, in consideration of the mutual promises of this Agreement, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Subordination. Tenant agrees that the Lease, and all estates, options and rights created under the Lease, hereby are subordinated and made subject to the lien and priority of the Security Instrument.

2. Nondisturbance. Lender agrees that no foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure, or other sale of the Property in connection with enforcement of the Security Instrument or otherwise in satisfaction of the underlying loan shall operate to terminate the Lease or Tenant's rights thereunder to possess and use the Leased Space provided, however, that (a) the term of the Lease has commenced, (b) Tenant is in possession of the Leased Space, and (c) the Lease is in full force and effect and no uncured default exists under the Lease, beyond any applicable notice and cure periods.

3. Attornment. Tenant agrees to attorn to and recognize as its landlord under the Lease each party acquiring legal title to the Property by foreclosure (whether judicial or nonjudicial) of the Security Instrument, deed-in-lieu of foreclosure, or other sale in connection with enforcement of the Security Instrument or otherwise in satisfaction of the underlying loan ("**Successor Owner**"). Provided that the conditions set forth in Section 2 above are met at the time Successor Owner becomes owner of the Property, Successor Owner shall perform all obligations of the landlord under the Lease arising from and after the date title to the Property was transferred to Successor

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Owner. In no event, however, will any Successor Owner be: (a) liable for any default, act or omission of any prior landlord under the Lease (except that Successor Owner shall not be relieved from the obligation to cure any defaults which are non-monetary and continuing in nature, and such that Successor Owner's failure to cure would constitute a continuing default under the Lease; (b) subject to any offset or defense which Tenant may have against any prior landlord under the Lease, except that Tenant shall retain the right to any offset or defense against Successor Owner as to any matters constituting a default under the Lease and (i) which arise after Successor Owner has acquired legal title to the Property or (ii) which are non-monetary and continuing in nature as of the date Successor Owner acquires legal title to the Property and can be cured but remain uncured beyond Successor Owner's applicable cure period; (c) bound by any payment of rent or additional rent made by Tenant to Landlord more than 30 days in advance; (d) bound by any modification or supplement to the Lease, or waiver of Lease terms, which revise Tenant's or Landlord's monetary obligations under the Lease, modifies the term of the Lease, the parties' termination rights or the description of the Leased Space, made without Lender's written consent thereto; (e) liable for the return of any security deposit or other prepaid charge paid by Tenant under the Lease, except to the extent such amounts were actually received by Successor Owner; (f) liable or bound by any right of first refusal or option to purchase all or any portion of the Property; or (g) liable for construction, completion or payment to Tenant for any improvements to the Property or as required under the Lease for Tenant's use and occupancy (whenever arising); provided, however, this clause (g) shall in no way modify, limit or impair any obligation of Successor Owner to perform maintenance and repair obligations to existing improvements and provided further, that if Successor Owner fails to perform any such maintenance and repair obligations, then Tenant shall have all rights and remedies available to it in the Lease, at law, and in equity. Although the foregoing provisions of this Agreement are self-operative, Tenant agrees to execute and deliver to Lender or any Successor Owner such further instruments as Lender or a Successor Owner may from time to time request in order to confirm this Agreement. If any liability of Successor Owner does arise pursuant to this Agreement, such liability shall be limited to Successor Owner's interest in the Property.

4. Rent Payments; Notice to Tenant Regarding Rent Payments. Tenant agrees not to pay rent more than one (1) month in advance unless otherwise specified in the Lease. After notice is given to Tenant by Lender that Landlord is in default under the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the assignment of leases and rents granted by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender all rent and all other amounts due or to become due to Landlord under the Lease, and Landlord hereby expressly authorizes Tenant to make such payments to Lender upon reliance on Lender's written notice (without any inquiry into the factual basis for such notice or any prior notice to or consent from Landlord) and hereby releases Tenant from all liability to Landlord in connection with Tenant's compliance with Lender's written instructions.

5. Lender Opportunity to Cure Landlord Defaults. Tenant agrees that, until the Security Instrument is satisfied of record by Lender, it will not exercise any remedies under the Lease following a Landlord default without having first given to Lender (a) written notice of the alleged Landlord default and (b) the opportunity to cure such default within the time periods provided for cure by Landlord, measured from the time notice is received by Lender. Tenant acknowledges that Lender is not obligated to cure any Landlord default, but if Lender elects to do so, Tenant agrees to accept cure by Lender as that of Landlord under the Lease and will not exercise any right or remedy under the Lease for a Landlord default. Performance rendered by Lender on Landlord's behalf is without prejudice to Lender's rights against Landlord under the Security Instrument or any other documents executed by Landlord in favor of Lender in connection therewith.

6. Miscellaneous.

(a) Notices. All notices under this Agreement will be effective only if made in writing and addressed to the address for a party provided below such party's signature. A new notice address may be established from time to time by written notice given in accordance with this Section. All notices will be deemed received only upon actual receipt. Notice to outside counsel or parties other than the named Tenant, Lender and Landlord, now or hereafter designated by a party as entitled to notice, are for convenience only and are not required for notice to a party to be effective in accordance with this section.

(b) Entire Agreement; Modification. This Agreement is the entire agreement between the parties relating to the subordination and nondisturbance of the Lease, and supersedes and replaces all prior discussions, representations and agreements (oral and written) with respect to the subordination and nondisturbance

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of the Lease. This Agreement controls any conflict between the terms of this Agreement and the Lease. This Agreement may not be modified, supplemented or terminated, nor any provision hereof waived, unless by written agreement of Lender and Tenant, and then only to the extent expressly set forth in such writing.

(c) Binding Effect. This Agreement binds and inures to the benefit of each party hereto and their respective heirs, executors, legal representatives, successors and assigns, whether by voluntary action of the parties or by operation of law. If the Security Instrument is a deed of trust, this Agreement is entered into by the trustee of the Security Instrument solely in its capacity as trustee and not individually.

(d) Unenforceability. Any provision of this Agreement which is determined by a government body or court of competent jurisdiction to be invalid, unenforceable or illegal shall be ineffective only to the extent of such holding and shall not affect the validity, enforceability or legality of any other provision, nor shall such determination apply in any circumstance or to any party not controlled by such determination.

(e) Construction of Certain Terms. Defined terms used in this Agreement may be used interchangeably in singular or plural form, and pronouns cover all genders. Unless otherwise provided herein, all days from performance shall be calendar days, and a "business day" is any day other than Saturday, Sunday and days on which Lender is closed for legal holidays, by government order or weather emergency.

(f) Governing Law. This Agreement shall be governed by the laws of the State in which the Property is located (without giving effect to its rules governing conflicts of laws).

(g) **WAIVER OF JURY TRIAL. THE PARTIES HERETO HEREBY WAIVE THEIR RIGHT, TO THE FULL EXTENT PERMITTED BY LAW, AND AGREE NOT TO ELECT, A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT.**

(h) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed agreement even though all signatures do not appear on the same document.

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SIGNATURES AND NOTARIES APPEAR ON THE FOLLOWING PAGES

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IN WITNESS WHEREOF, this Agreement is executed as of the date first above written.

LENDER:

Wells Fargo Bank, National Association, not individually, but solely as Trustee for the Certificate Holders of Deutsche Mortgage and Asset Receiving Corporation., Commercial Mortgage Pass-Through Certificates, Series 2007-C9, Trustee

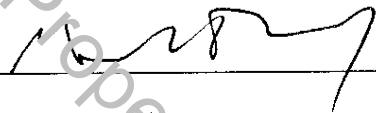
By: Berkadia Commercial Mortgage LLC, a Delaware limited liability company, its Master Servicer

LENDER NOTICE ADDRESS:

Wells Fargo Bank, National Association, not individually, but solely as Trustee

c/o Berkadia Commercial Mortgage LLC
323 Norristown Road, Suite 300
Ambler, PA 19002

Attn: Client Relations Manager
For Loan # 011056311

By: 
Name: Gary A. Routzahn
Title: Authorized Representative

Notary Acknowledgment for Lender:

COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF MONTGOMERY :

On January 11, 2016, before me, Kimberly A Robinson, Notary Public, personally appeared Gary A. Routzahn, 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/she executed the same in his/her authorized capacity, and that by his/her 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 Commonwealth of Pennsylvania that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


SIGNATURE OF NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA {seal}
NOTARIAL SEAL
Kimberly A. Robinson, Notary Public
Lower Gwynedd Twp., Montgomery County
My Commission Expires May 2, 2018
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

[Tenant's Signature and Acknowledgment continued on next page]

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LANDLORD:

Kedzie Plaza I, LLC,
an Illinois limited liability company

LANDLORD NOTICE ADDRESS:

Kedzie Plaza I, LLC
c/o Lears & Co., Inc.
3100 W. Dundee, Suite 308
Northbrook, IL 60062
Attn: David Israel

By: David Israel
Name: David Israel
Title: Manager

Notary Acknowledgment for Landlord:

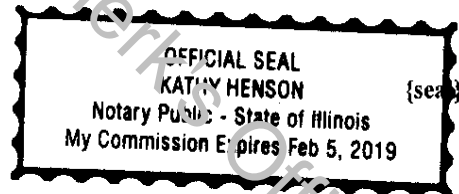
State of Illinois
County of Cook : ss

On 1/6/16, before me, Kathy Henson, Notary Public, personally appeared David Israel, 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 Illinois that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Kathy Henson
SIGNATURE OF NOTARY PUBLIC



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Exhibit "A"
(Legal Description of the Property)

DESCRIPTION OF THE LAND

Parcel 1:

The South 410 feet (except the North 50 feet thereof) of the North 853 feet of the West 472 feet of the East 505 feet of Section 11, Township 38 North, Range 13 East of the Third Principal Meridian in Cook County, Illinois, except that part described as follows:

That part of Blocks 1 and 16 in James H. Ree's Subdivision of the Northeast Quarter of Section 11, Township 38 North, Range 13, East of the Third Principal Meridian, described as follows: Commencing at the intersection of the South line of the North 853.0 feet of Section 11 with the West line of the East 33.0 feet of Section 11; thence North 00 degrees 00 minutes 00 seconds East along the West line of the East 33.0 feet aforesaid 100.0 feet to the point of beginning; thence North 89 degrees 48 minutes 00 seconds West 85.0 feet to the West line of the East 118.0 feet of Section 11 aforesaid; thence North 00 degrees 00 minutes 00 seconds East along the last described line 100.0 feet to the North line of the South 200.0 feet of the North 853.0 feet of Section 11 aforesaid; thence South 89 degrees 48 minutes 00 seconds East along the last described line 85.0 feet to the West line of the East 33.0 feet of Section 11 aforesaid; thence South 00 degrees 00 minutes 00 seconds West along the last described line 100.0 feet to the point of beginning, in Cook County, Illinois

Parcel 2:

Non-exclusive, perpetual, and reciprocal easement for the benefit of Parcel 1 for reasonable access, ingress and egress for the use of all paved driveways and walkways, as created by Declaration of Easements, Covenants, Conditions, and Restrictions, dated April 6, 1995 and recorded April 11, 1995 as Document Number 95241207, within the following described land: That part of Blocks 1 and 16 in James Ree's Subdivision of the Northeast quarter of Section 11, Township 38 North, Range 13, East of the Third Principal Meridian, described as follows: Commencing at the intersection of the South line of the North 853.0 feet of Section 11 with the West line of the East 33.0 feet of Section 11; thence North 00 degrees 00 minutes 00 seconds East along the West line of the East 33.0 feet aforesaid 100.0 feet to the point of beginning; thence North 89 degrees 48 minutes 00 seconds West 85.0 feet to the West line of the East 118.0 feet of Section 11 aforesaid; thence North 00 degrees 00 minutes 00 seconds East along the last described line 100.0 feet to the North line of the South 200.0 feet of the North 853.0 feet of Section 11 aforesaid; thence South 89 degrees 48 minutes 00 seconds East along the last described line 85.0 feet to the West line of the East 33.0 feet of Section 11 aforesaid; thence South 00 degrees 00 minutes 00 seconds West along the last described line 100.0 feet to the point of beginning, in Cook County, Illinois.

Address: 4812 S Kedzie Ave
Chicago IL 60632

PIN: 19-11-201-031-0000