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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption

Report Mortgage Fraud
800-532-8785



Doc#: 1506222090 Fee: \$90.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 03/03/2015 12:36 PM Pg: 1 of 27

Property of Cook County Clerk's Office

The property identified as: **PIN:** 12-09-213-032-0000

Address:

Street: 5220 Rose Street

Street line 2:

City: Rosemont

State: IL

ZIP Code: 60018

Lender: Wells Fargo Bank, National Association

Borrower: Fashion Outlets of Chicago LLC

Loan / Mortgage Amount: \$200,000,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Certificate number: 7523B135-9A83-47CF-87BE-B7943765232A

Execution date: 02/26/2015

8977180 1 of 3

CARD
DM

Loan No. 1005615

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**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

WELLS FARGO BANK, NATIONAL
ASSOCIATION
Commercial Real Estate (AU#63650)
333 South Grand Avenue, 9th Floor
Los Angeles, CA 90071
Attention: Cecilia Garcia

(Space Above For Recording Use)

Property Identification Number(s): See Exhibit A

**AMENDED AND RESTATED MORTGAGE
WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

NAME OF MORTGAGOR(S): Fashion Outlets of Chicago LLC, a Delaware limited liability company
State Identification Number: 4667375

NAME OF BORROWER(S): Fashion Outlets of Chicago LLC, a Delaware limited liability company

NAME OF MORTGAGEE: WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent

PROPERTY ADDRESS: 5220 Rose Street, Rosemont, Illinois 60018

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1 of 3

Property of Cook County Clerk's Office

**WELLS
FARGO**

THIS MORTGAGE SECURES NOTES WHICH PROVIDE FOR A VARIABLE INTEREST RATE.

THIS INSTRUMENT COVERS GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY AND SHOULD BE FILED FOR RECORD IN THE REAL PROPERTY RECORDS WHERE MORTGAGES ON REAL ESTATE ARE RECORDED. THIS INSTRUMENT SHOULD ALSO BE INDEXED AS A UNIFORM COMMERCIAL CODE FINANCING STATEMENT COVERING GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY, THE MAILING ADDRESSES OF THE SECURED PARTY AND THE DEBTOR ARE WITHIN.

**AMENDED AND RESTATED MORTGAGE
WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

THE PARTIES TO THIS AMENDED AND RESTATED MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("**Mortgage**"), made as of February 26, 2015, are Fashion Outlets of Chicago LLC, a Delaware limited liability company, ("**Mortgagor**"), and Wells Fargo Bank, National Association ("**Mortgagee**"), as Administrative Agent for itself and for the benefit of the "Lenders" party to that certain Amended and Restated Loan Agreement of even date herewith among Mortgagor, Mortgagee and Lenders ("**Loan Agreement**"). Administrative Agent acting alone, may (but shall not be obligated to) from time to time record disclosure statements or amendments to this Mortgage updating the names and addresses of all current Lenders. Capitalized terms used and not defined herein shall have the meanings given to them in the Loan Agreement. The mailing address of Mortgagor and Mortgagee are the addresses for those parties set forth or referred to in Section 7.8 below.

This Mortgage amends and restates in its entirety that certain Construction Mortgage With Absolute Assignment Of Leases And Rents, Security Agreement And Fixture Filing dated as of March 2, 2012, executed by Mortgagor in favor of Mortgagee, and recorded March 6, 2012, as Instrument No. 1206641164 in the Official Records of Cook County, Illinois. This is not a novation.

ARTICLE 1. GRANT

- 1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Mortgage, Mortgagor irrevocably grants, conveys, bargains, warrants, mortgages, encumbers, assigns, transfers, hypothecates, pledges, sells, sets over, assigns and grants a security interest and assigns to Mortgagee all right, title, interest and privileges of Mortgagor in that certain real property located in the County of Cook, State of Illinois, described on Exhibit A attached hereto (the "Land"), together with all right, title, interest and privileges of Mortgagor in all buildings and other improvements, fixtures and equipment now or hereafter located on the real property ("**Improvements**"), all right, title, interest, and privileges of Mortgagor in and to all streets, ways, roads, and alleys used in connection with or pertaining to such real property, all development rights or credits, licenses and permits, air rights, water, water rights, water stock related to real property, minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, all appurtenances, easements, estates, tenements, hereditaments, privileges, rights and rights of way appurtenant or related thereto, but not any obligations, under any covenants, conditions or restrictions (including all supplemental addenda thereto, the "CC&Rs"), pertaining to the Land; provided, however, that Mortgagee shall have no liability under any such CC&Rs unless and until Mortgagee forecloses on the "Property" as herewith defined; and all rights and credits, licenses and permits related to the real property; together with all interest

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or estate which Mortgagor now owns or may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing (collectively, the "**Property**"). The listing of specific rights or property shall not be interpreted as a limit of general terms.

- 1.2 **WARRANTY OF TITLE; USE OF PROPERTY.** Mortgagor represents and warrants that it is the sole owner of good and marketable unencumbered fee simple title to the Property and that this Mortgage is a first and prior lien on the Property, subject only to the Permitted Liens. Mortgagor represents and warrants that the Property is not used principally for agricultural or farming purposes, and that the Property is not homestead property. Mortgagor represents and warrants all of the Property consists of a single tax parcel or complete tax parcels, and there is no property included in such tax parcel or such tax parcels other than the Property. Except as permitted under the Loan Agreement, Mortgagor further covenants and agrees that it shall not cause all or any portion of the Property to be replatted or any lots or boundary lines to be adjusted, changed or altered for either ad valorem tax purposes or otherwise, and shall not consent to the assessment of the Property in conjunction with any property other than the Property.
- 1.3 **USE OF PROCEEDS.** Mortgagor represents and warrants to Mortgagee that the proceeds of the obligations secured hereby shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligations secured by this Mortgage constitute (i) a "business loan" as that term is defined in, and for all purposes of, 815 ILCS 205/4(1)(c), and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(l).

ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED.** Mortgagor makes this Mortgage for the purpose of securing: (a) the payment and performance of the obligations contained herein and in the Loan Agreement; (b) the payment of TWO HUNDRED MILLION AND NO/100THS DOLLARS (\$200,000,000.00) with interest thereon, according to the terms of those certain Promissory Notes Secured by Mortgages (each a "Note" and collectively, "Notes"), executed by Borrower, and payable to Mortgagee for the Lenders; (c) payment to Mortgagee for the Lenders of all liability, whether liquidated or unliquidated, defined, contingent, conditional or of any other nature whatsoever, and performance of all other obligations, arising under any swap, derivative, foreign exchange or hedge transaction or arrangement (or other similar transaction or arrangement howsoever described or defined) at any time entered into between Borrower and Mortgagee in connection with the Loan, including, without limitation, the Swap Contract, as defined in the Loan Agreement; (d) payment and performance of Borrower's obligations contained in the other Loan Documents (except to the extent expressly stated not to be secured by a mortgage on real property); (e) payment and performance of any future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Mortgage and (f) the payment and performance of the obligations contained in all modifications, extensions, novations and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes (collectively, the "**Secured Obligations**").
- 2.2 **INCORPORATION.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations, together with all costs of collecting the Secured Obligations. All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and the rate of interest on one or more Secured Obligations may vary from time to time.

UNOFFICIAL COPY**ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS**

- 3.1 **ASSIGNMENT.** Mortgagor hereby absolutely and irrevocably assigns and transfers to Mortgagee all of Mortgagor's right, title and interest in, to and under: (a) all present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing, occupancy, use or operation of the Property or portion thereof, whether such leases, subleases, licenses and agreements are now existing or entered into after the date hereof ("**Leases**"); and (b) the rents, income, issues, revenues, receipts, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Leases ("**Payments**"). The term "**Leases**" shall also include all subleases and other agreements for the use or occupancy of the Property, all guarantees of and security for the tenant's performance thereunder, the right to exercise any landlord's liens and other remedies to which the landlord is entitled, and all amendments, extensions, renewals or modifications thereof which are permitted hereunder. This is a present, unconditional and absolute assignment, not an assignment for security purposes only, and Mortgagee's right to the Leases and Payments is not contingent, upon and may be exercised without, possession of the Property.
- 3.2 **GRANT OF LICENSE.** Mortgagee confers upon Mortgagor a revocable license ("**License**") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined); provided that upon the cure of such Default and so long as no other Default which has not been cured exists, the License granted to Mortgagee pursuant to this Section 3.2 shall be automatically reinstated without further action of the parties. Upon the occurrence and during the continuance of a Default, the License shall be automatically revoked and Mortgagee may collect and apply the Payments pursuant to the terms hereof without notice and without taking possession of the Property. All payments thereafter collected by Mortgagor shall be held by Mortgagor as trustee under a constructive trust for the benefit of Mortgagee. Furthermore, upon any Default and revocation of the License as aforesaid, Mortgagee shall be entitled to receive and Mortgagor covenants to deliver immediately to Mortgagee, upon demand, any and all Payments theretofore collected by Mortgagor which remain in the possession or control of Mortgagor, whether or not commingled with other funds of Mortgagor, and to the extent such Payments have not been delivered, the Payments shall be held in trust for Mortgagee. In the event Mortgagee collects any Payments, and Mortgagor thereafter fully cures the Default to the reasonable satisfaction of Mortgagee, any portion of the Payments actually received by Mortgagee which Mortgagee has not applied pursuant to the terms hereof shall be disbursed to Mortgagor. Mortgagor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any rentals or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no duty to inquire as to whether any Default has actually occurred or is then existing. Mortgagor hereby relieves the tenants from any liability to Mortgagor by reason of relying upon and complying with any such notice or demand by Mortgagee. Mortgagee may apply, in its sole discretion, any Payments so collected by Mortgagee against any Secured Obligation under the Loan Documents (as defined in the Loan Agreement), whether existing on the date hereof or hereafter arising. Collection of any Payments by Mortgagee shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice.
- 3.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Mortgagee to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or any other parties, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; (d) responsible for or under any duty to produce rents or profits; or (e) directly or indirectly liable to Mortgagor or any other person as a consequence of the exercise or failure to exercise any of the rights, remedies or powers granted to Mortgagee hereunder or to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases, except to the extent that any of the foregoing constitutes gross negligence or intentional misconduct.

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- 3.4 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants that: (a) all existing Leases are in full force and effect and are enforceable in accordance with their respective terms, and, to the best of Mortgagor's knowledge and except as disclosed in writing by Mortgagor to Mortgagee prior to the date hereof, no breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Leases on the part of any party; (b) no rent or other payment under any existing Lease has been paid by any lessee for more than one (1) month in advance (excluding security deposits, percentage rent and common area expenses subject to later reconciliation); and (c) none of the lessor's interests under any of the Leases has been transferred or assigned under a presently effective assignment.
- 3.5 **COVENANTS.** Mortgagor covenants and agrees at Mortgagor's sole cost and expense to: (a) perform the obligations of lessor contained in the Leases and use commercially reasonable efforts to enforce by all available remedies performance by the lessees of the obligations of the lessees contained in the Leases; (b) give Mortgagee prompt written notice of any default known to Mortgagor which occurs with respect to any of the Leases of at least 15,000 Rentable Square Feet or more, whether the default be that of the lessee or of the lessor; (c) exercise commercially reasonable efforts to keep and/or market, as applicable, all portions of the Property which are capable of being leased at all times at no less than fair market rental rates reasonable and customary for similarly situated properties; (d) deliver to Mortgagee fully executed copies (certified as true and correct) of each and every Lease upon Mortgagee's request; and (e) execute and record such additional assignments of any Lease or specific subordinations (or subordination, attornment and non-disturbance agreements executed by the lessor and lessee) of any Lease to the Mortgage, in form and substance reasonably acceptable to Mortgagee, as Mortgagee may request. Mortgagor shall not, without Mortgagee's prior written consent or as otherwise permitted by any provision of the Loan Agreement: (i) enter into any Lease (or termination, material modification or amendment of any Lease) with any tenant leasing 15,000 Rentable Square Feet or more of the Property, or leasing land upon which at least 15,000 Rentable Square Feet or more of space will be constructed; (ii) execute any other assignment relating to any of the Leases pertaining to 15,000 Rentable Square Feet or more; (iii) discount any rent or other sums due under the Leases or collect the same in advance, other than to collect rent one (1) month in advance of the time when it becomes due (excluding security deposits, percentage rent and common area expenses subject to later reconciliation); (iv) with respect to Leases of 15,000 Rentable Square Feet or more, terminate, or modify or amend in any material respect any of the terms of such Leases or in any manner release or discharge the lessees thereof from any obligations thereunder; (v) with respect to Leases of 15,000 Rentable Square Feet or more, consent to any assignment or subletting by any lessee; or (vi) subordinate or agree to subordinate any of the Leases to any other mortgage or encumbrance, provide that Borrower shall only be required to obtain and deliver a subordination, nondisturbance and attornment agreement, in form and substance reasonably satisfactory to Administrative Agent, from any tenant leasing 15,000 Rentable Square Feet or more. Any such attempted action in violation of the provisions of this Section 3.5 shall be null and void. Without in any way limiting the requirement of Mortgagee's consent hereunder, any sums received by Mortgagor in consideration of any termination (or the release or discharge of any lessee) modification or amendment of any Lease shall be applied to reduce the outstanding Secured Obligations and any such sums received by Mortgagor shall be held in trust by Mortgagor for such purpose, except as otherwise provided in the Loan Agreement.
- 3.6 **ESTOPPEL CERTIFICATES.** Within thirty (30) days after written request by Mortgagee, Mortgagor shall exercise commercially reasonable efforts to obtain and deliver to Mortgagee and to any party designated by Mortgagee an estoppel certificate in form and substance reasonably satisfactory to Mortgagee, from the tenant under any Lease designated by Mortgagee, provided that Mortgagor shall not be obligated to obtain an estoppel certificate for any Lease more often than once before the first anniversary of the Effective Date (including any estoppel certificate for such Lease delivered to Mortgagee prior to the Effective Date) or more often than once during any 12 month period thereafter commencing on the anniversary of the Effective Date.

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ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **SECURITY INTEREST.** This Mortgage is intended to be and shall constitute a security agreement as defined in the UCC, Mortgagor being the debtor and Mortgagee being the secured party. Mortgagor hereby grants and assigns to Mortgagee a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Mortgagor now or at any time hereafter has any interest (collectively, the "Collateral"):

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on the Property; together with all Payments and other rents and security deposits derived from the Property; all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Property or any business now or hereafter conducted thereon by Mortgagor; excluding the trade name "Macerich" and any name using the same or any derivative thereof; development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Property, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights, all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Property; all advance payments of insurance premiums made by Mortgagor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Mortgagee, whether or not disbursed; all funds deposited with Mortgagee pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof; all of Mortgagor's right, title and interest, now or hereafter acquired, to the payment of money from Mortgagee to Mortgagor under any swap, derivative, foreign exchange or hedge transaction or arrangement (or similar transaction or arrangement howsoever described or defined) at any time entered into between Mortgagor and Mortgagee in connection with the Note, including, without limitation, the Swap Contract, as defined in the Loan Agreement; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Mortgage constitutes a fixture filing under the Illinois Uniform Commercial Code, as amended or recodified from time to time ("UCC"). For purposes of this fixture filing, the "Debtor" is the Mortgagor and the "Secured Party" is the Mortgagee. A description of the land which relates to the fixtures is set forth in Exhibit A attached hereto. Mortgagor is the record owner of such land. The filing of a financing statement covering the Collateral shall not be construed to derogate from or impair the lien or provisions of this Mortgage with respect to any property described herein which is real property or which the parties have agreed to treat as real property. Similarly, nothing in any financing statement shall be construed to alter any of the rights of Mortgagee under this Mortgage or the priority of Mortgagee's lien created hereby, and such financing statement is declared to be for the protection of Mortgagee in the event any court shall at any time hold that notice of Mortgagee's priority interest in any property or interests described in this Mortgage must, in order to be effective against a particular class of persons, including but not limited to the Federal government and any subdivision, agency or entity of the Federal government, be filed in the UCC records.

- 4.2 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants that: (a) Mortgagor has, or will have, good title to the Collateral; (b) Mortgagor has not previously assigned or encumbered the

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Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity; (c) Mortgagor's principal place of business is located at the address shown in Section 7.12; and (d) Mortgagor's legal name is exactly as set forth on the first page of this Mortgage and all of Mortgagor's organizational documents or agreements delivered to Mortgagee are complete and accurate in every respect.

- 4.3 **COVENANTS.** Mortgagor agrees: (a) to execute and deliver such documents as Mortgagee deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Mortgagee prior written notice thereof; (c) to reasonably cooperate with Mortgagee in perfecting all security interests granted herein and in obtaining such agreements from third parties as Mortgagee deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of its rights hereunder; and (d) that Mortgagee is authorized to file financing statements in the name of Mortgagor to perfect Mortgagee's security interest in Collateral.
- 4.4 **RIGHTS OF MORTGAGEE.** Upon the occurrence of a Default, Mortgagee shall have all the rights of a "Secured Party" under the UCC. In addition to such rights, Mortgagee may, but shall not be obligated to, at any time without notice and at the expense of Mortgagor: (a) give notice to any person of Mortgagee's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Mortgagee therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Mortgagor under or from the Collateral. In addition to the rights under the UCC and the other Loan Documents, Mortgagee may: (i) upon written notice, require Mortgagor to assemble any or all of the Collateral and make it available to Mortgagee at a place designated by Mortgagee; (ii) without prior notice, enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Mortgagee at Mortgagor's expense; and/or (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales. Notwithstanding the above, in no event shall Mortgagee be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagee shall make an express written election of said remedy under the UCC or other applicable law. Mortgagee may, for the account of Mortgagor and at Mortgagor's expense: (A) operate, use, consume, sell, lease, license or dispose of the Collateral as Mortgagee deems appropriate for the purpose of performing any or all of the Secured Obligations; (B) enter into any agreement, compromise, or settlement, including insurance claims, which Mortgagee may deem desirable or proper with respect to any of the Collateral; and (C) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Mortgagor in connection with or on account of any or all of the Collateral. In disposing of Collateral hereunder, Mortgagee may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any disposition of any Collateral may be applied by Mortgagee to the payment of expenses incurred by Mortgagee in connection with the foregoing, including reasonable attorneys' fees, and the balance of such proceeds may be applied by Mortgagee toward the payment of the Secured Obligations in such order of application as Mortgagee may from time to time elect. Notwithstanding any other provision hereof, Mortgagee shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagor shall make an express written election of said remedy under the UCC or other applicable law. Mortgagor agrees that Mortgagee shall have no obligation to process or prepare any Collateral for sale or other disposition.

Mortgagor acknowledges and agrees that a disposition of the Collateral in accordance with Mortgagee's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that thirty (30) days prior notice of such disposition is commercially reasonable notice. Mortgagor further agrees that any sale or other disposition of all or any portion of the Collateral may be applied by Mortgagee first to the reasonable expenses incurred in connection therewith, including reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations.

- 4.5 **POWER OF ATTORNEY.** Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's attorney in fact (such agency being coupled with an interest) for the limited purposes described in this Section. If

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Mortgagor fails to do so within ten (10) Business Days after Mortgagee's written request, the Mortgagee, as such attorney in fact may, without the obligation to do so, in Mortgagee's name, or in the name of Mortgagor, prepare, execute and file or record financing statements, continuation statements, applications for registration and similar papers necessary to create, perfect or preserve any of Mortgagee's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Mortgagor; provided, however, that Mortgagee as such attorney in fact shall be accountable only for such funds as are actually received by Mortgagee.

- 4.6 **POSSESSION AND USE OF COLLATERAL.** Except as otherwise provided in this Section or the other Loan Documents (as defined in the Loan Agreement), so long as no Default exists under this Mortgage or any of the Loan Documents, Mortgagor may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Mortgagor's business and in accordance with the Loan Agreement. Without limiting the generality of the foregoing, provided no Default exists under this Mortgage or any of the other Loan Documents, Mortgagor may distribute to its members proceeds from the Property, whether in the form of earnings, income or other proceeds from the Property, free of any claim or interest in favor of Mortgagee, in its capacity as Administrative Agent under the Loan Documents, or any Lender, in its capacity as a lender under the Loan Documents; provided that this sentence does not affect the rights, title and interests of Mortgagee or any Lender in connection with any other credit facility, including, without limitation, the Partnership Credit Facilities.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1 **TITLE.** Mortgagor represents and warrants that, except as disclosed to Mortgagee in the Title Policy or in a writing which refers to this warranty, Mortgagor lawfully holds and possesses fee simple title to the Property without limitation on the right to encumber, and that this Mortgage is a first and prior lien on the Property.
- 5.2 **PERFORMANCE OF SECURED OBLIGATIONS.** Mortgagor and Borrower shall promptly pay and perform each Secured Obligation when due pursuant to the terms of the Loan Agreement and the other Loan Documents. If Mortgagor fails to timely pay or perform any portion of the Secured Obligations (including taxes, assessments and insurance premiums), or if a legal proceeding is commenced that may significantly affect Mortgagee's rights in the Property, then Mortgagee may (but is not obligated to), at Mortgagor's expense, take such reasonable action as it considers to be necessary to protect the value of the Property and Mortgagee's rights in the Property, including the retaining of counsel and reasonable expenses incurred therewith, and any reasonable amount so expended by Mortgagee will be added to the Secured Obligations and will be payable by Mortgagor to Mortgagee on demand, together with interest thereon from the date of advance until paid at the default rate provided in the Note.
- 5.3 **TAXES AND ASSESSMENTS.** Subject to Mortgagor's rights to contest payment of taxes as may be provided in the Loan Agreement, Mortgagor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi public authority or utility company which are or which may become a lien upon or cause a loss in value of the Property or any interest therein. Mortgagor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed upon the Property by any public authority or upon Mortgagee by reason of its interest in any Secured Obligation or in the Property, or by reason of any payment made to Mortgagee pursuant to any Secured Obligation; provided, however, Mortgagor shall have no obligation to pay taxes which may be imposed from time to time upon Mortgagee and which are measured by and imposed upon Mortgagee's net income. If the Property or any lot or parcel thereof is part of a larger tax or assessment parcel, Mortgagor shall, as soon after recordation of this Mortgage as is reasonably possible, cause the tax or assessment parcel to be split or amended so that its boundaries correspond to the boundaries of the Property and its lots or parcels.
- 5.4 **TAX AND INSURANCE IMPOUNDS.** At any time during a Default, at Mortgagee's option and upon its demand, Mortgagor shall pay to Mortgagee monthly, annually or as otherwise directed by Mortgagee an amount estimated by Mortgagee to be equal to: (a) one-twelfth (1/12th) of all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or may become a

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lien upon the Property or Collateral and will become due for the tax year during which such payment is so directed; and (b) one-twelfth (1/12th) of premiums for fire, hazard and insurance required or requested pursuant to the Loan Documents when same are next due; provided, however, in the event Mortgagor cures such Default and no other "Default" exists under this Mortgage or any other Loan Document, Mortgagee shall release to Mortgagor such funds, including all accrued interest, to the extent such funds were not previously released or applied. If Mortgagee determines that any amounts paid by Mortgagor are insufficient for the payment in full of such taxes, assessments, levies, charges and/or insurance premiums, Mortgagee shall notify Mortgagor of the increased amounts required to pay all amounts when due, whereupon Mortgagor shall pay to Mortgagee within thirty (30) days thereafter the additional amount as stated in Mortgagee's notice. All sums so paid shall be held in an interest bearing account for the benefit of Mortgagor; and Mortgagee shall, unless Mortgagor is otherwise in Default hereunder or under any Loan Document, apply said funds to the payment of, or at the sole option of Mortgagee release said funds to Mortgagor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon Default by Mortgagor hereunder or under any Secured Obligations, Mortgagee may apply all or any part of said sums to any Secured Obligations and/or to cure such Default, in which event Mortgagor shall be required to restore all amounts so applied, as well as to cure any other events or conditions of Default not cured by such application. Upon assignment of this Mortgage, Mortgagee shall have the right to assign all amounts collected and in its possession to its assignee whereupon Mortgagee shall be released from all liability with respect thereto. Following full repayment of the Secured Obligations, the balance of all amounts collected and in Mortgagee's possession shall be paid to Mortgagor and no other party shall have any right or claim thereto. Mortgagee at its election may commingle funds received under this Section with other funds of Mortgagee, subject to Mortgagor's right to interest on amounts held by Mortgagee in accordance herewith.

- 5.5 **LIENS, ENCUMBRANCES AND CHARGES.** Subject to Mortgagor's right to contest liens pursuant to the terms of the Loan Agreement and, except for Permitted Liens, Mortgagor shall immediately discharge any lien not approved by Mortgagee in writing. Subject to the provisions of the Loan Agreement regarding mechanics' liens, Mortgagor shall pay when due all obligations secured by or which may become liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property, the Collateral or the Land, or any interest therein, whether senior or subordinate hereto.
- 5.6 **DUE ON SALE OR ENCUMBRANCE.** If the Property or any interest therein shall be under contract to sell (except a contract to sell that is subject to Mortgagee's consent) or shall be sold, transferred (including, without limitation, through a direct or indirect sale or transfer of an interest of the corporate stock or general partnership interests or limited liability company interests of Mortgagor), mortgaged, assigned, further encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Mortgagee, except for a Permitted Transfer (as defined in the Loan Agreement except with respect to a Partnership Transaction) or as may be otherwise provided in the Loan Agreement, THEN Mortgagee, in its sole discretion, may declare all Secured Obligations immediately due and payable. In the event of any Partnership Transaction, Mortgagee shall have all rights and remedies as set forth in Section 2.12 of the Loan Agreement.
- 5.7 **DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**
- a. Subject to subsections (b), (c) and (d), below, the following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Mortgagor to Mortgagee and, at the request of Mortgagee, shall be paid directly to Mortgagee: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property or Collateral; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Property or Collateral ((i) and (ii) being collectively referred to as "Condemnation Proceeds"); (iii) all proceeds of any insurance policies (whether or not expressly required by Mortgagee to be maintained by Mortgagor, including, but not limited to, earthquake insurance and terrorism insurance, if any) payable by reason of loss sustained to all or any part of the Property or Collateral; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in this Mortgage, Mortgagee

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may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and, subject to subsections (b), (c) and (d), below, may apply the balance to the Secured Obligations in any order acceptable to Mortgagee, and/or Mortgagee may release all or any part of the proceeds to Mortgagor upon any reasonable conditions Mortgagee may impose. Mortgagee may commence, appear in, defend, prosecute or collect any and all assigned claims, actions and awards assigned to Mortgagee and, while any Default exists, may adjust, compromise and settle any and all claims assigned to Mortgagee; provided, however, in no event shall Mortgagee be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Mortgagee or its employees or agents. Notwithstanding the foregoing, provided no Default or Potential Default (as defined in the Loan Agreement) relating to the payment of money then exists under this Mortgage or any of the other Loan Documents, (x) any such claims or awards of damages and all other compensation that do not exceed the amount of \$5,000,000 per occurrence (or \$7,500,000 in the aggregate) are specifically excepted from the provisions of this Section 5.7(a) and Mortgagor may at its sole discretion settle, prosecute or defend any such claim and any such payments may be retained by and applied by Mortgagor without regard to the foregoing; provided, however, that Mortgagor must repair and restore the (a) Property in accordance with the Loan Documents and Other Related Documents that are executed by Borrower or any Guarantor and applicable law and apply such proceeds to the cost of the same, and (y) the proceeds of any rental interruption insurance shall be paid directly to Mortgagor and may be retained by and applied by Mortgagor without regard to the foregoing or the provisions of Section 5.7(b).

- b. Notwithstanding anything in this Mortgage or any other Loan Document to the contrary, so long as no Default exists, and no Potential Default relating to the payment of money exists, Mortgagee shall permit insurance or condemnation proceeds held by Mortgagee to be used for repair or restoration (and Mortgagor shall use such insurance or condemnation proceeds for repair or restoration), but Mortgagee may condition such application upon reasonable conditions, including, without limitation: (i) the deposit with Mortgagee of such additional funds which Mortgagee determines are needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Mortgagee (the arrangement contained in the Loan Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Mortgagee of plans and specifications for the work, a contract for the work signed by a contractor reasonably acceptable to Mortgagee, a cost breakdown of the work to be performed, all of which shall be reasonably acceptable to Mortgagee; and (iv) the delivery to Mortgagee of evidence reasonably acceptable to Mortgagee (aa) that after completion of the work the income from the Property will be sufficient to pay all expenses and debt service for the Property; (bb) of the continuation of Leases covering no less than sixty-five percent (65%) of the Rentable Square Feet of the Improvements; (cc) that upon completion of the work, the size, capacity and total value of the Property will be at least as great as it was at the time the damage or condemnation occurred; (dd) that there has been no material adverse change in the financial condition or credit of Mortgagor or the Partnership since the date of this Mortgage (excluding any material adverse change that is caused by the applicable damage or condemnation but that would be cured with the release of such insurance or condemnation proceeds); and (ee) of the satisfaction of any additional conditions that Mortgagee may reasonably establish to protect its security. Mortgagor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within 60 days of receipt by Mortgagee of such insurance or condemnation proceeds, then Mortgagee may apply such insurance or condemnation proceeds to pay down principal of the Secured Obligations in such order and amounts as Mortgagee in its sole discretion may choose.
- c. Notwithstanding anything to the contrary in this Mortgage or any other Loan Document, if Mortgagor provides to Mortgagee reasonable evidence that the aggregate cost of repairing or restoring the damage caused by any casualty or partial condemnation to the Property will not exceed \$5,000,000.00, then Mortgagee shall permit Mortgagor to use the insurance proceeds or

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condemnation proceeds payable to Mortgagor for such casualty or condemnation to repair and restore the same, if and only if, no Default exists, and no Potential Default relating to the payment of money exists; provided, however, that Mortgagor must repair and restore the same in accordance with the Loan Documents and Other Related Documents that are executed by Borrower or any Guarantor and applicable law and apply such proceeds to the cost of the same; provided, further however, that Mortgagee shall not be required under this clause (c) to permit Mortgagor to use in aggregate more than \$7,500,000.00 of insurance and condemnation proceeds.

- d. Notwithstanding anything to the contrary contained in this Mortgage or any other Loan Document, if and only if no Default exists, and no Potential Default relating to the payment of money exists, and Mortgagee receives any Insurance Proceeds from policies of insurance maintained by Mortgagor or any Condemnation Proceeds, then, to the extent and only to the extent any Proceeds Agreement requires that Mortgagor restore the Property or pay such Insurance Proceeds or Condemnation Proceeds, as the case may be, directly to any party to such Proceeds Agreement other than the Mortgagor (or any affiliate of Mortgagor) for use for restoration of the Property, (i) such Proceeds Agreement shall control over any conflicting provision in this Mortgage solely with respect to such application of such Insurance Proceeds or Condemnation Proceeds, as the case may be, to the restoration of the Property or the payment directly to any party to such Proceeds Agreement other than the Mortgagor (or any affiliate of Mortgagor) for use for restoration of the Property, and (ii) Administrative Agent shall make such Insurance Proceeds or Condemnation Proceeds, as the case may be, available to Mortgagor and/or such other party in accordance with such Proceeds Agreement, subject to the terms of this Mortgage that do not conflict with the Proceeds Agreement. "Proceeds Agreement" means the Purchase Agreement, the Parking Lease (as defined below) and each lease for space in excess of 15,000 Rentable Square Feet on the Property. "Parking Lease" means that certain Parking Facility Lease dated February 22, 2012, between Village of Rosemont, an Illinois municipal corporation ("Village"), and Mortgagor, as evidenced by that certain Memorandum of Lease dated February 22, 2012, by Village and Mortgagor, recorded March 6, 2012, as Instrument No. 1206641163 in the Official Records of Cook County, Illinois.

- 5.8 **MAINTENANCE AND PRESERVATION OF THE PROPERTY.** Subject to the provisions of the Loan Agreement (including, without limitation, the Permitted Development Activities), Mortgagor covenants: (a) to insure the Property and Collateral against such risks as Mortgagee may require in accordance with Article 5 of the Loan Agreement and, at Mortgagee's request, to provide certificates of such insurance acceptable to Mortgagee, and to comply with the requirements of any insurance companies providing such insurance; (b) to keep the Property and Collateral in good condition and repair; (c) not to remove or demolish the Property or Collateral or any part thereof (other than in the ordinary course of removing and/or replacing obsolete equipment, fixtures, machinery or similar items and which removal or demolition shall have no material impact to the value of the Property), not to alter, restore or add to the Property or Collateral and not to initiate or acquiesce in any change in any zoning or other land classification which affects the Property without Mortgagee's prior written consent or as provided in the Loan Agreement (except for any zoning changes in the ordinary course of Mortgagor's business to accommodate a particular tenant's or occupant's use of its premises for retail, restaurant service and, to the extent approved by Administrative Agent, any other businesses commonly operated in similar retail centers); (d) provided that Mortgagee makes available to Mortgagor available insurance proceeds and/or condemnation proceeds pursuant thereto, to complete or restore promptly and in good and workmanlike manner the Property and Collateral, or any part thereof which may be damaged or destroyed; (e) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Property or Collateral and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to commit or permit waste of the Property or Collateral; and (g) to do all other acts which from the character or use of the Property or Collateral may be reasonably necessary to maintain and preserve its value.

- 5.9 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and Collateral and title to and right of possession

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of the Property and Collateral, the security hereof and the rights and powers of Mortgagee hereunder against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing of the assertion of any claim of at least \$2,000,000.00, of the filing of any action or proceeding of more than \$2,000,000.00, of the occurrence of any material damage to the Property or Collateral and of any condemnation offer or action, in each case, as and when known to Mortgagor.

5.10 COMPENSATION; EXCULPATION; INDEMNIFICATION.

- a. Subject to any limitations set forth in the Loan Agreement or Other Related Documents (including without limitation, Section 9.1 of the Loan Agreement), Mortgagor will promptly pay to or reimburse Mortgagee for any and all fees or expenses incurred in connection with this Mortgage. Mortgagor shall pay to Mortgagee reasonable compensation for services rendered concerning this Mortgage, including without limit any statement of amounts owing under any Secured Obligation. Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of (i) the exercise of the rights, remedies or powers granted to Mortgagee in this Mortgage; (ii) the failure or refusal of Mortgagee to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or Collateral or under this Mortgage, or (iii) any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure to leave the Property after a Default (hereinafter defined) or from any other act or omission of Mortgagee in managing the Property after a Default unless the loss is caused by the gross negligence or willful misconduct of Mortgagee and no such liability shall be asserted against or imposed upon Mortgagee, and all such liability is hereby expressly waived and released by Mortgagor.
- b. MORTGAGOR INDEMNIFIES, DEFENDS AND HOLDS HARMLESS MORTGAGEE AND LENDERS AGAINST, AND HOLDS MORTGAGEE AND LENDERS HARMLESS FOR, FROM AND AGAINST, ALL LOSSES (AS DEFINED IN THE LOAN AGREEMENT) WHICH ANY OF THEM MAY SUFFER OR INCUR: (I) BY REASON OF THIS MORTGAGE; (II) BY REASON OF THE EXECUTION OF THIS MORTGAGE OR IN PERFORMANCE OF ANY ACT REQUIRED OR PERMITTED HEREUNDER OR BY LAW; (III) AS A RESULT OF ANY FAILURE OF MORTGAGOR TO PERFORM MORTGAGOR'S OBLIGATIONS; OR (IV) BY REASON OF ANY ALLEGED OBLIGATION OR UNDERTAKING ON MORTGAGEE'S PART TO PERFORM OR DISCHARGE ANY OF THE REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS OR OTHER OBLIGATIONS OF MORTGAGOR. MORTGAGOR SHALL BE LIABLE UNDER THIS SECTION 5.10(b) FOR ALL LOSSES THAT ARE REASONABLY RELATED TO ANY OF THE LOAN, THE LOAN DOCUMENTS AND OTHER RELATED DOCUMENTS THAT ARE EXECUTED BY BORROWER OR ANY GUARANTOR, THE PROPERTY, THE LAND, THE IMPROVEMENTS, OR THE OFFSITE IMPROVEMENTS BUT MORTGAGOR SHALL NOT BE LIABLE UNDER THIS SECTION FOR ANY LOSSES THAT MAY BE CONSEQUENTIAL DAMAGES (OTHER THAN ANY CONSEQUENTIAL DAMAGES AWARDED TO ANY THIRD PARTY AGAINST MORTGAGEE OR ANY LENDER FROM ANY ACTION OR INACTION BY MORTGAGOR OR ANY GUARANTOR OR ANY AFFILIATE OF MORTGAGOR OR ANY GUARANTOR) OR PUNITIVE DAMAGES (OTHER THAN ANY PUNITIVE DAMAGES AWARDED TO ANY THIRD PARTY AGAINST MORTGAGEE OR ANY LENDER FROM ANY ACTION OR INACTION BY MORTGAGOR OR GUARANTOR OR ANY AFFILIATE OF MORTGAGOR OR GUARANTOR). THE ABOVE OBLIGATION OF MORTGAGOR TO INDEMNIFY AND HOLD HARMLESS MORTGAGEE AND LENDERS SHALL SURVIVE THE RELEASE AND CANCELLATION OF THE SECURED OBLIGATIONS AND THE RELEASE OR PARTIAL RELEASE OF THIS MORTGAGE.
- c. Mortgagor shall pay all amounts and indebtedness arising under this Section 5.10 immediately upon demand by Mortgagee together with interest thereon from the date the indebtedness arises at the highest rate of interest then accruing on any principal of the Loan.

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d. Section 13.30 of the Loan Agreement is hereby incorporated herein by this reference.

- 5.11 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property and Collateral or in any manner obligated under the Secured Obligations ("**Interested Parties**"), Mortgagee may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Property and Collateral and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the liens, assignments and security interests created by this Mortgagee upon the Property and Collateral or any other security provided herein or in the other Loan Documents. Upon the payment and performance of all Secured Obligations, including, without limitation, Mortgagee's receipt of all sums owing and outstanding under the Notes, Mortgagee shall execute and deliver to Mortgagor or the then record owner of the Property a release the lien hereof.
- 5.12 **SUBROGATION.** Mortgagee shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Mortgagee pursuant to the Loan Documents or by the proceeds of any loan secured by this Mortgage.
- 5.13 **RIGHT OF INSPECTION.** Mortgagee, its agents, representatives and employees, may enter the Property at any reasonable time with reasonable notice (not to exceed one time per year, except such limitation shall not apply during the continuance of a Default), at Mortgagee's cost and expense (except during the continuance of a Default, at Mortgagor's reasonable cost and expense) for the purpose of inspecting the Property and Collateral and ascertaining Mortgagor's compliance with the terms hereof and of the other Loan Documents.
- 5.14 **COMMUNITY FACILITIES DISTRICT.** Except as set forth in the Loan Agreement, without obtaining the prior written consent of Mortgagee, Mortgagor shall not consent to, or vote in favor of, the inclusion of all or any part of the Property in any assessment or community facilities district. Mortgagor shall immediately give notice to Mortgagee of any notification or advice that Mortgagor may receive from any municipality or other third party of any intent or proposal to include all or any part of the Property in any assessment or community facilities district. Mortgagee shall have the right to file a written objection to the inclusion of all or any part of the Property in any assessment or community facilities district, either in its own name or in the name of Mortgagor, and to appear at, and participate in, any hearing with respect to the formation of any such district.
- 5.15 **COLLATERAL PROTECTION ACT.** Pursuant to the terms of the Collateral Protection Act, 815 ILCS 180/1 et seq., Mortgagor is hereby notified that unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage or the Loan Agreement, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in the Property, which insurance may, but need not, protect the interests of Mortgagor. The coverage purchased by Mortgagee may not pay any claim made by Mortgagor or any claim made against Mortgagor in connection with the Property. Mortgagee may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained the insurance as required hereunder or under the Loan Agreement. If Mortgagee purchases insurance for the Property, Mortgagor will be responsible for the costs of such insurance, including interest and any other charges imposed in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Secured Obligations. The costs of such insurance may be greater than the cost of insurance Mortgagor may be able to obtain for itself.
- 5.16 **ACTIONS BY MORTGAGEE.** From time to time, without affecting the personal liability of any person for payment of any indebtedness or performance of any obligations secured hereby, Mortgagee, without liability therefor and without notice, may: (a) release all or any part of the Property and Collateral from this Mortgage; (b) consent to the making of any map or plat thereof requested in writing by Mortgagor; and (c) join in any grant of easement thereon, any declaration of covenants and restrictions, or any extension

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agreement or any agreement subordinating the lien or charge of this Mortgage, in each case, if requested in writing by Mortgagor.

ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **DEFAULT.** For all purposes hereof, the term "**Default**" shall mean (a) any default under any Note, the Loan Agreement, or any of the other Loan Documents, including this Mortgage; or (b) any default under the Other Mortgage.
- 6.2 **RIGHTS AND REMEDIES.** At any time after Default, Mortgagee shall have all the following rights and remedies in addition to Mortgagee's rights and remedies under the other Loan Documents and Other Related Documents and at law, in equity or otherwise:
- a. With or without notice, to declare all Secured Obligations immediately due and payable;
 - b. With or without notice, and without releasing Mortgagor or Borrower from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Mortgagor or Borrower and, in connection therewith, to enter upon the Property and do such acts and things as Mortgagee deems necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Mortgage or the rights or powers of Mortgagee under this Mortgage; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Mortgagee, is or may be senior in priority to this Mortgage, the judgment of Mortgagee being conclusive as between the parties hereto; (iii) to obtain insurance and to pay any premiums or charges with respect to insurance required to be carried under this Mortgage; or (iv) to employ counsel, accountants, contractors and other appropriate persons;
 - c. To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Mortgage or to obtain specific enforcement of the covenants of Mortgagor hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Mortgagor waives the defense of laches and any applicable statute of limitations;
 - d. To apply to a court of competent jurisdiction for and to obtain appointment of a receiver of the Property (who may be designated by Mortgagee) as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Mortgagor hereby consents to such appointment;
 - e. To enter upon, possess, manage and operate the Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Mortgagor or the then owner of the Property, to make, terminate, enforce or modify Leases of the Property upon such terms and conditions as Mortgagee deems proper, to make repairs, alterations and improvements to the Property as necessary, in Mortgagee's sole judgment, to protect or enhance the security hereof;
 - f. To resort to and realize upon the security hereunder and any other security now or later held by Mortgagee concurrently or successively and in one or several consolidated or independent actions and to apply the proceeds received upon the Secured Obligations all in such order and manner as Mortgagee determines in its sole discretion.;
 - g. Upon sale of the Property at any foreclosure, Mortgagee may credit bid (as determined by Mortgagee in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Mortgagee may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Mortgagee in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by

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Mortgagee or any Lender with respect to the Property prior to foreclosure; (iii) expenses and costs which Mortgagee anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, the costs of any structural reports, hazardous waste reports and other due diligence, costs to carry the Property prior to resale, costs of resale e.g. commissions, reasonable attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, including the time value of money during any anticipated holding period by Mortgagee; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations;; and (vii) such other factors or matters that Mortgagee (in its sole and absolute discretion) deems appropriate. In regard to the above, Mortgagor acknowledges and agrees that: (w) Mortgagee is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Mortgagee any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Mortgagee's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Mortgagor and Mortgagee; and (z) Mortgagee's credit bid may be (at Mortgagee's or any such Lender's sole and absolute discretion) higher or lower than any appraised value of the Property.

- 6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** Except as may be otherwise required by applicable law, after deducting all costs, fees and expenses of Mortgagee, including, without limitation, cost of evidence of title and reasonable attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, all proceeds of any foreclosure sale shall be applied: (a) to payment of all sums expended by Mortgagee under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.
- 6.4 **APPLICATION OF OTHER SUMS.** All sums received by Mortgagee under this Mortgage other than those described in Section 6.3, less all costs and expenses incurred by Mortgagee or any receiver, including, without limitation, reasonable attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Mortgagee shall determine in its sole discretion; provided, however, Mortgagee shall have no liability for funds not actually received by Mortgagee.
- 6.5 **NO CURE OR WAIVER.** Neither Mortgagee's nor any receiver's entry upon and taking possession of all or any part of the Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Mortgagee or any receiver, shall cure or waive any breach, Default or notice of Default under this Mortgage, or nullify the effect of any notice of Default or sale (unless all Secured Obligations then due have been paid and performed and Mortgagor has cured all other Defaults) or limit or impair the Secured Obligations or Mortgagor's liability therefor, or impair the status of the security, or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, lease or option or a subordination of the lien of, or security interests created by, this Mortgage.
- 6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Mortgagor agrees to pay to Mortgagee immediately and without demand all costs and expenses incurred by Mortgagee pursuant to this Article 6 (including, without limitation, court costs and reasonable attorneys' fees, whether incurred in litigation, (including, without limitation, at trial, on appeal or in any bankruptcy or other proceeding), or not and the costs of any appraisals obtained in connection with a determination of the fair value of the Property) with interest from the date of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Notes. In addition, Mortgagor will pay a reasonable fee for title searches, sale guarantees, publication costs, appraisal reports or environmental assessments made in preparation for and in the conduct of any such proceedings or suit. All of the foregoing amounts must be

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paid to Mortgagee as part of any reinstatement tendered hereunder. In the event of any legal proceedings, court costs and reasonable attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Mortgagee.

- 6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, to prepare, execute and file or record any document necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Property and Collateral, and upon the occurrence and continuance of a Default, Mortgagee may perform any obligation of Mortgagor hereunder. Furthermore, the Mortgagor hereby authorizes Mortgagee and its agents or counsel to file financing statements that indicate the collateral (i) as all assets of the Mortgagor or words of similar effect or (ii) as being of an equal, greater or lesser scope, or with greater or lesser detail, than as set forth in this Mortgage and/or any other Loan Document, on behalf of the Mortgagor.
- 6.8 **REMEDIES CUMULATIVE.** All rights and remedies of Mortgagee provided hereunder are cumulative and are in addition to all rights and remedies provided by applicable law or in any other agreements between Mortgagor and Mortgagee. No failure on the part of Mortgagee to exercise any of its rights hereunder arising upon any Default shall be construed to prejudice its rights upon the occurrence of any other or subsequent Default. No delay on the part of Mortgagee in exercising any such rights shall be construed to preclude it from the exercise thereof at any time while that Default is continuing. Mortgagee may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Secured Obligations after its due date, Mortgagee shall not waive the agreement contained herein that time is of the essence, nor shall Mortgagee waive either its right to require prompt payment or performance when due of the remainder of the Secured Obligations or its right to consider the failure to so pay or perform a Default.
- 6.9 **ILLINOIS MORTGAGE FORECLOSURE LAW.** It is the intention of Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "Act"), 735 ILCS 5/15-1101 et seq., and with respect to such Act, Mortgagor agrees and covenants that:
- a. Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference. If any provision in this Mortgage shall be inconsistent with any provision of the Act, provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section 6.2 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of a Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated specifically in this Mortgage, shall be added to the indebtedness secured hereby and/or by the judgment of foreclosure.
 - b. Wherever provision is made in this Mortgage or the Loan Agreement for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control the use of insurance proceeds, from and

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after the entry of judgment of foreclosure, all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale.

- c. In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in the possession of the Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties and provisions for in Sections 15-1701 and 15-1703 of the Act.
- d. Mortgagor acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.
- e. Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Section 5/15-1601 of the Act or other applicable law or replacement statutes.

ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1 **ADDITIONAL PROVISIONS.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property and Collateral and such further rights and agreements are incorporated herein by this reference and to the extent inconsistent herewith shall control. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter executed by all parties thereto. Where Mortgagor and Borrower are not the same, "Mortgagor" means the owner of the Property in any provision dealing with the Property, "Borrower" means the obligor in any provision dealing with the Secured Obligations, and both where the context so requires.
- 7.2 **ATTORNEYS' FEES.** If any Note is placed with an attorney for collection or if an attorney is engaged by Mortgagee to exercise rights or remedies or otherwise take actions to collect thereunder or under any other Loan Document, or if suit be instituted for collection, enforcement of rights and remedies, then in all events, Mortgagor agree(s) to pay all reasonable costs of collection, exercise of remedies or rights or other assertion of claims, including, but not limited to, reasonable attorneys' fees, whether or not court proceedings are instituted, and, where instituted, whether in district court, appellate court, or bankruptcy court. In the event of any legal proceedings, court costs and attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Mortgagee.
- 7.3 **NO WAIVER.** No previous waiver and no failure or delay by Mortgagee in acting with respect to the terms of any Note or this Mortgage shall constitute a waiver of any breach, default, or failure of condition under any Note, this Mortgage or the obligations secured thereby. A waiver of any term of any Note, this Mortgage or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of the Notes and the Loan Agreement and the terms of any other document related to the loan evidenced by the Notes and Loan Agreement, the terms of the Notes and Loan Agreement shall prevail.
- 7.4 **MERGER.** No merger shall occur as a result of Mortgagee's acquiring any other estate in, or any other lien on, the Property unless Mortgagee consents to a merger in writing. Furthermore, to the extent the

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Secured Obligations have not been repaid in full, the assignment of the Payments and other liens, security interests, rights and remedies granted hereunder to Mortgagee, and the covenants, representations, warranties and obligations of Mortgagor which are not satisfied or discharged by any foreclosure of the Property, shall survive such foreclosure and remain in force and effect thereafter, it being acknowledged and agreed that all obligations of Mortgagor and rights and remedies of Mortgagee set forth herein are contractual in nature, and such obligations, rights and remedies, and all liens, assignments, security interests and other security provided to Mortgagee hereunder and under the other Loan Documents (but excluding the lien against the Property or portions thereof that are foreclosed) shall not be extinguished by the subject foreclosure.

- 7.5 **OBLIGATIONS OF MORTGAGOR, JOINT AND SEVERAL.** If more than one person has executed this Mortgage as "Mortgagor", the obligations of all such persons hereunder shall be joint and several.
- 7.6 **WAIVER OF MARSHALLING RIGHTS.** Mortgagor, for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a lien on or interest in the Property and Collateral, hereby waives all rights to have the Property and Collateral and/or any other property, which is now or later may be security for any Secured Obligations ("Other Property") marshalled upon any foreclosure of the lien of this Mortgage or on a foreclosure of any other lien or security interest against any security for any of the Secured Obligations. Mortgagee shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Mortgagee may designate.
- 7.7 **RULES OF CONSTRUCTION.** When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "Property" and "Collateral" means all and any part of the Property and Collateral, respectively, and any interest in the Property and Collateral, respectively. The word "Borrower" as used herein shall include both the named Borrower and any other person at any time assuming or otherwise becoming primarily liable for all or any part of the obligations of the named Borrower under the Notes and the other Loan Documents. The term "person" as used herein shall include any individual, company, trust or other legal entity of any kind whatsoever. If this Mortgage is executed by more than one person, the term "Mortgagor" shall include all such persons. The word "Mortgagee" as used herein shall include Mortgagee, its successors, assigns and affiliates. The term "Property" and "Collateral" means all and any part of the Property and Collateral, respectively, and any interest in the Property and Collateral, respectively.
- 7.8 **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section does not waive or modify the provisions of the Section above titled "Due on Sale or Encumbrance".
- 7.9 **EXECUTION IN COUNTERPARTS.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.
- 7.10 **GOVERNING LAW.** This Mortgage shall be construed in accordance with the laws of the State of Illinois, except to the extent that federal laws preempt the laws of such state.
- 7.11 **EXHIBITS INCORPORATED.** All exhibits, schedules or other items attached hereto are incorporated into this Mortgage by such attachment for all purposes.

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- 7.12 **NOTICES.** All notices, demands or other communications required or permitted to be given pursuant to the provisions of this Mortgage shall be in writing and shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid (except that, if any notice of a Default or Potential Default is sent by United States Postal Service mail, then such notice of a Default or Potential Default shall be sent by certified mail, return receipt requested), or by Overnight Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective 3 days after mailing, if mailed by first class mail, and otherwise upon receipt at the address set forth below; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Mortgagor:	Fashion Outlets of Chicago LLC c/o The Macerich Company 401 Wilshire Boulevard, Suite 700 Santa Monica, California 90407 Attention: Scott W. Kingsmore, Senior Vice President
With a copy to:	Fashion Outlets of Chicago LLC c/o The Macerich Company 401 Wilshire Boulevard, Suite 700 Santa Monica, California 90407 Attention: Chief Legal Officer Fashion Outlets of Chicago LLC c/o The Macerich Company 401 Wilshire Boulevard, Suite 700 Santa Monica, California 90407 Attention: Chief Financial Officer Manatt, Phelps & Phillips, LLP 11355 West Olympic Boulevard Los Angeles, California 90064 Attn: Anita Sabine, Esq.
Mortgagee:	WELLS FARGO BANK, NATIONAL ASSOCIATION Commercial Real Estate (AU#63650) 1800 Century Park East, 12 th Floor Los Angeles, CA 90067 Loan #: 1005615
With a copy to:	WELLS FARGO BANK, NATIONAL ASSOCIATION Minneapolis Loan Center 608 2nd Ave South, 11th Floor Minneapolis, MN 55402 Attention: Sherif Abdelaziz

Any party shall have the right to change its address for notice hereunder to any other location within the United States by the giving of 30 days notice to the other party in the manner set forth hereinabove. Mortgagor shall forward to Mortgagee, without delay, any notices, letters or other communications delivered to the Property or to Mortgagor naming Mortgagee, "Lender" or the "Construction Lender" or any similar designation as addressee, or which could reasonably be deemed to affect the construction of the

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Improvements or the ability of Mortgagor to perform its obligations to Mortgagee under the Note or the Loan Agreement.

Mortgagor requests a copy of any statutory notice of default and a copy of any statutory notice of sale be mailed to Mortgagor at the address set forth above.

- 7.13 **SUBORDINATION OF PROPERTY MANAGER'S LIEN.** Any property management agreement for the Property entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Property shall be subject and subordinate to the lien of this Mortgage and shall provide that Mortgagee may terminate such agreement at any time after the occurrence of a Default hereunder. A short form thereof (which shall not include any financial or economic terms), at Mortgagee's request, shall be recorded with the County Recorder of the county where the Property is located.
- 7.14 **FUTURE ADVANCES.** This Mortgage is given to secure future advances as defined and authorized under applicable Illinois statutes, including, without limitation, 735 ILCS 5/15-1302, and it shall secure not only presently existing obligations under the Loan Agreement and the other Loan Documents but also future advances under the Loan Agreement (whether such advances are obligatory or to be made at the option of Mortgagee or Lenders, or otherwise) as are made within twenty years (or the maximum period permitted by applicable law, whichever is longer) from the date of this Mortgage, to the same extent and with the same priority as if such future advances were made on the date of the execution of this Mortgage and without regard as to whether or not there is any advance made at the time of execution of this Mortgage and without regard as to whether or not there is any indebtedness outstanding at the time any advance is made. The maximum principal amount which may be secured hereby at any one time is Four Hundred Million And No/100 Dollars (\$400,000,000.00), plus interest thereon, and any disbursements made by Mortgagee for the payment of taxes, special assessments, or insurance on the Property, with interest on such disbursements; provided, however, that the foregoing limitation shall apply only to the maximum amount of the lien created by this Mortgage, and it shall not in any manner limit, affect or impair any grant of a security interest or other right in favor of Mortgagee or Lenders under the provisions of the Loan Agreement or under any of the other Loan Documents or Other Related Documents. To the fullest extent permitted by applicable law, the lien of this Mortgage, as to all such sums so advanced, shall have priority over all subsequent liens and encumbrances, including statutory liens (excepting solely taxes and assessments levied on the Mortgaged Property secured by this Mortgage).
- 7.15 **MISCELLANEOUS.** If any provision or obligation under this Mortgage shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be deemed severed from this Mortgage and the validity, legality and enforceability of the remaining provisions or obligations shall remain in full force as though the invalid, illegal, or unenforceable provision had never been a part of this Mortgage. Mortgagor hereby irrevocably appoints and authorizes Mortgagee as Mortgagor's attorney-in-fact, which agency is coupled with an interest, and as such attorney-in-fact Mortgagee may upon and during the continuance of a Default, without the obligation to do so, execute and/or record in Mortgagee's or Mortgagor's name any notices, instruments or documents that Mortgagee deems appropriate to protect Mortgagee's interest under any of the Loan Documents. The powers of attorney granted by Mortgagor to Mortgagee in this Mortgage shall be unaffected by the disability of the principal so long as any portion of the Loan remains unpaid. Mortgagee shall have no obligation to exercise any of the foregoing rights and powers in any event. Mortgagee hereby discloses that it may exercise the foregoing powers of attorney for Mortgagee's benefit, and such authority need not be exercised for Mortgagor's best interest. Time is of the essence of each and every term herein.

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IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the day and year set forth above.

"MORTGAGOR"

FASHION OUTLETS OF CHICAGO LLC,
a Delaware limited liability company

By: Macerich Chicago Fashion Outlets LLC,
a Delaware limited liability company
Its: Managing Member

By: 
Name: Scott W. Kingsmore
Title: Senior Vice President

This Document Prepared By:

Sheppard Mullin Richter & Hampton LLP
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071
Nancy Brandel, Esq.

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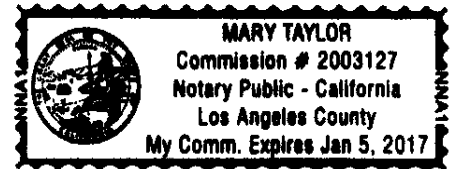
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On 2/26/15, before me, Mary Taylor, a Notary Public, personally appeared Scott Kingsmore, 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

Mary Taylor

Loan No. 1005615

UNOFFICIAL COPY**EXHIBIT A****DESCRIPTION OF PROPERTY**

Exhibit A to Amended and Restated Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by FASHION OUTLETS OF CHICAGO LLC, a Delaware limited liability company, as Mortgagor to WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent, as Mortgagee, dated as of February 26, 2015.

All the certain real property located in the County of Cook, State of Illinois, described as follows:

Legal Description of Land

PARCEL 1:

LOT 1 IN ROSEMONT OUTLET MALL RESUBDIVISION, BEING A RESUBDIVISION OF HENRY HACHMEISTER'S DIVISION FIRST ADDITION TO B.L. CARLSEN'S INDUSTRIAL SUBDIVISION AND B.L. CARLSEN'S INDUSTRIAL SUBDIVISION IN THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 9 TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND BEING A RESUBDIVISION OF FOSTER-RIVER ROAD INDUSTRIAL SUBDIVISION, OWNER'S DIVISION, AND RPAC-1 SUBDIVISION IN THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 10, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN AND RECORDED FEBRUARY 27, 2012 AS DOCUMENT 1205813031 IN COOK COUNTY, ILLINOIS

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE GRANT OF A TEMPORARY CONSTRUCTION EASEMENT AND ACCESS, LOADING, REFUSE AND UTILITY EASEMENT AGREEMENT DATED - AND RECORDED - AS DOCUMENT - FROM THE VILLAGE OF ROSEMONT TO FASHION OUTLETS OF CHICAGO, LLC FOR THE PURPOSE OF ACCESS, LOADING, REFUSE AND UTILITIES TO SUPPORT THE DEVELOPMENT ON PARCEL 1 OVER THE FOLLOWING DESCRIBED LAND:

THE SOUTH 293.73 FEET OF THE WEST 291.50 FEET (AS MEASURED ON THE NORTH AND ON THE SOUTH LINES THEREOF) OF LOT 5 (EXCEPTING FROM SAID PART OF LOT 5 THE WEST 200 FEET THEREOF; AND EXCEPTING FROM SAID PART OF LOT 5 THE SOUTH 33 FEET THEREOF) IN HENRY HACHMEISTER'S SUBDIVISION OF PARTS OF SECTIONS 9 AND 10, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 6, 1908 AS DOCUMENT NUMBER 4183101 IN BOOK 97 OF PLATS PAGE 45:

EXCEPTING FROM THE ABOVE DESCRIBED PROPERTY THAT PART LYING SOUTH OF A LINE DRAWN FROM THE NORTHEAST CORNER OF THE EAST 93 FEET OF THE WEST 200 FEET OF THE SOUTH 233 FEET OF SAID LOT 5 TO THE NORTHWEST CORNER OF LOT 6 IN B. L. CARLSEN'S INDUSTRIAL SUBDIVISION, BEING A SUBDIVISION OF PART OF LOT 5 IN SAID HENRY HACHMEISTER'S SUBDIVISION, RECORDED JUNE 3, 1960 AS DOCUMENT NUMBER 1925132, PER DEED RECORDED FEBRUARY 18, 2004 AS DOCUMENT 0404914037, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EXCLUSIVE TEMPORARY CONSTRUCTION EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE GRANT OF A TEMPORARY CONSTRUCTION EASEMENT AND ACCESS, LOADING, REFUSE

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AND UTILITY EASEMENT AGREEMENT DATED - AND RECORDED - AS DOCUMENT - FROM THE VILLAGE OF ROSEMONT TO FASHION OUTLETS OF CHICAGO, LLC FOR THE PURPOSE OF CONSTRUCTING THE DEVELOPMENT ON PARCEL 1 OVER THE FOLLOWING DESCRIBED LAND:

THE SOUTH 293.73 FEET OF THE WEST 291.50 FEET (AS MEASURED ON THE NORTH AND ON THE SOUTH LINES THEREOF) OF LOT 5 (EXCEPTING FROM SAID PART OF LOT 5 THE WEST 200 FEET THEREOF; AND EXCEPTING FROM SAID PART OF LOT 5 THE SOUTH 33 FEET THEREOF) IN HENRY HACHMEISTER'S SUBDIVISION OF PARTS OF SECTIONS 9 AND 10, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 6, 1908 AS DOCUMENT NUMBER 4183101 IN BOOK 97 OF PLATS PAGE 45:
EXCEPTING FROM THE ABOVE DESCRIBED PROPERTY THAT PART LYING SOUTH OF A LINE DRAWN FROM THE NORTHEAST CORNER OF THE THE EAST 93 FEET OF THE WEST 200 FEET OF THE SOUTH 233 FEET OF SAID LOT 5 TO THE NORTHWEST CORNER OF LOT 6 IN B. L. CARLSEN'S INDUSTRIAL SUBDIVISION, BEING A SUBDIVISION OF PART OF LOT 5 IN SAID HENRY HACHMEISTER'S SUBDIVISION, RECORDED JUNE 3, 1960 AS DOCUMENT NUMBER 1925132, PER DEED RECORDED FEBRUARY 18, 2004 AS DOCUMENT 0404914037, IN COOK COUNTY, ILLINOIS.

Property Address: 5220 Rose Street, Rosemont, Illinois 60018

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Land (Mall) APNs:

~~12-10-102-015-0000~~

12-09-213-032

12-10-102-016

12-10-102-017

Property of Cook County Clerk's Office

UNOFFICIAL COPY**EXHIBIT B****CROSS-DEFAULT/CROSS-COLLATERALIZATION RIDER**

Exhibit B to Amended and Restated Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of February 26, 2015, executed by FASHION OUTLETS OF CHICAGO LLC, a Delaware limited liability company, as Mortgagor, to WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent, as Mortgagee.

1. **ADDITIONAL SECURITY - OBLIGATIONS SECURED BY OTHER MORTGAGE.** In addition to the obligations secured by this Mortgage and described as "Secured Obligations" herein, this Mortgage shall also secure the payment and performance of all obligations secured by that certain Amended and Restated Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing (Leaschold) ("**Other Mortgage**") made by Mortgagor, as mortgagor, to Mortgagee, dated as of even date herewith and intended to be recorded concurrently herewith, in the Office of the County Recorder of Cook County, State of Illinois.
2. **ADDITIONAL SECURITY - OBLIGATIONS SECURED BY MORTGAGE.** In addition to the obligations secured by the Other Mortgage, the Other Mortgage shall also secure the payment and performance of all obligations secured by this Mortgage.
3. **DEFAULT - OTHER MORTGAGE.** A Default under the Other Mortgage, as defined therein, shall, at Mortgagee's option, constitute a Default under this Mortgage.
4. **DEFAULT - MORTGAGE.** A Default under this Mortgage shall, at Mortgagee's option, constitute a Default under the Other Mortgage.
5. **WAIVER OF MARSHALING RIGHTS.** Mortgagor waives all rights to have all or part of the Property and Collateral described in this Mortgage and/or the Other Mortgage marshaled upon any foreclosure of this Mortgage or the Other Mortgage. Mortgagee shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of the Property and Collateral described in either or both of said mortgages as a whole or in separate parcels, in any order that Mortgagee may designate. Mortgagor makes this waiver for itself, for all persons and entities claiming through or under Mortgagor and for persons and entities who may acquire a lien or security interest on all or any part of the Property and Collateral described in either of said mortgages, or on any interest therein.
6. **WARRANTIES AND REPRESENTATIONS.** Mortgagor represents and warrants that the lien of the Other Mortgage is a 1st lien on the property described therein and covered thereby and that the provisions of this Mortgage will not cause intervening liens to become prior to the lien of the Other Mortgage. If any intervening lien exists or hereafter arises, Mortgagor shall cause the same to be released or subordinated to the lien of the Other Mortgage, without limiting any other right or remedy available to Mortgagee.

Mortgagor further warrants that Mortgagor has no legal or equitable claim against any Mortgagor named in the Other Mortgage which would be prior to the lien of the Other Mortgage, or which would entitle Mortgagor to a judgment entitling Mortgagor to an equitable lien on all or any portion of that property prior in lien to the Other Mortgage.
7. **NON-IMPAIRMENT.** Except as supplemented and/or modified by this Mortgage, all of the terms, covenants and conditions of the Other Mortgage and the other loan documents executed in connection therewith shall remain in full force and effect.
8. **LIEN OF MORTGAGE AND OTHER MORTGAGE.** Mortgagor and Mortgagee acknowledge and agree that: this Mortgage shall constitute a lien or charge upon only that property described herein as the "Property"; and the Other Mortgage shall constitute a lien or charge upon only that property described therein as the "Property".