

# UNOFFICIAL COPY



1523829090

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Doc#: 1523829090 Fee: \$66.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 08/26/2015 03:31 PM Pg: 1 of 15

WELLS FARGO BANK, NATIONAL  
ASSOCIATION  
Real Estate Banking Group (AU #63650)  
1800 Century Park East, 12<sup>th</sup> Floor  
Los Angeles, CA 90067

Attn: Karen Whitehead  
Loan No. 1005625

THIS SPACE ABOVE FOR RECORDER'S USE

**FIDELITY NATIONAL TITLE** *to completion*  
*999012340*

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS AGREEMENT ("Agreement"), made as of the 14 day of August, 2015, between WELLS FARGO BANK, National Association, as Administrative Agent to the Lenders to the extent and in the manner provided in Article 12 of the Amended and Restated Loan Agreement, having an office at 1800 Century Park East, 12<sup>th</sup> Floor, Los Angeles, California 90067 (hereinafter called "Mortgagee") and NORDSTROM, INC., a Washington corporation having an office at 1700 Seventh Avenue, Suite 1000, Seattle, Washington 98101-4407 (hereinafter called "Tenant"), and FASHION OUTLETS OF CHICAGO LLC, a Delaware limited liability company (hereinafter called "Landlord").

### WITNESSETH:

WHEREAS, Mortgagee is holder to a loan to Landlord secured by a mortgage (hereinafter called "the Mortgage") covering a parcel of land owned by Landlord and described on **Exhibit "A"** annexed hereto and made a part hereof, together with the improvements erected thereon (said parcel of land and improvements thereon being hereinafter called the "Shopping Center"); and

WHEREAS, by a certain lease entered into between Landlord and Tenant dated as of Aug. 11, 2015 (hereinafter called collectively the "Lease"), Landlord leased to Tenant a portion of the Shopping Center, to-wit: the premises outlined on **Exhibit "B"** annexed hereto and made a part hereof, together with non-exclusive easements over the common areas of the Shopping Center (said premises and the easements appurtenant thereto being hereinafter called the "Demised Premises"); and

WHEREAS, a Short Form or Memorandum of the Lease is intended to be recorded in the public records of Cook County, Illinois; and

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WHEREAS, a copy of the Lease has been delivered to Mortgagee, the receipt of which is hereby acknowledged; and

WHEREAS, Mortgagee is unwilling to make said loan to Landlord unless the Lease is and continues to be subordinate to the lien of the Mortgage; and

WHEREAS, the parties hereto desire to effect the subordination of the Lease to the Mortgage and to provide for the recognition of Tenant's rights under the Lease and non-disturbance of Tenant by the holder of the Mortgage and its successors and assigns.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto intending to be legally bound hereby agree as follows:

1. Consent to Lease. Mortgagee hereby consents to and approves the Lease and the terms thereof, including the options to extend the term of the Lease as set forth in the Lease.
2. Subordination. Tenant covenants and agrees with Mortgagee that the Lease hereby is made and shall continue hereafter to be subject and subordinate to the lien, terms, covenants and conditions of the Mortgage, and to all current and future modifications extensions, renewals and consolidations thereof and the bond, note and other obligations secured thereby, with the same force and effect as if the Mortgage and the obligations secured thereby as so modified and extended had been executed and delivered prior to the execution and delivery of the Lease and without regard to the order of priority of recording the Mortgage and the Short Form or Memorandum of the Lease, subject, however, to the provisions of this Agreement.
3. Non-Disturbance. Mortgagee agrees that so long as the Lease shall be in full force and effect:
  - (a) Tenant shall not be named or joined as a party or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bond or note or other obligation secured thereby. Notwithstanding the foregoing provisions of this paragraph, if Tenant is an indispensable party in a foreclosure proceeding with respect to the Mortgage, Mortgagee may so name or join Tenant if Tenant may be so named without in any way diminishing or otherwise affecting the rights and privileges granted to, or inuring to the benefit of, Tenant under this Agreement or under the Lease;
  - (b) Subject to the provisions of Section 9 of this Agreement, the possession by Tenant of the Demised Premises and Tenant's right thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise affected by (i) any suit, action or proceeding upon the Mortgage or the bond or note or other obligation secured thereby, or for the foreclosure of the Mortgage or any other documents held by the holder of the Mortgage, or by any judicial sale or execution or other sale of the Demised Premises, or any deed given in lieu of foreclosure, or by the exercise of any other rights given to any holder of the Mortgage or other documents as a matter of law, or (ii) any default under the Mortgage or the bond or note or other obligation secured thereby;

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(c) All condemnation awards and insurance proceeds paid or payable with respect to the Demised Premises, including any improvements constructed on the Demised Premises by Tenant pursuant to the Lease, shall be applied and paid in the manner set forth in the Lease;

(d) Neither the Mortgage nor any other security instrument executed in connection therewith shall cover or be construed as subjecting in any manner to the lien thereof, any trade fixtures, signs or other personal property, at any time furnished or installed by or at the expense of Tenant or its subtenants or licensees on the Demised Premises regardless of the manner or mode of attachment thereof.

4. Attornment. If Mortgagee or any future holder of the Mortgage shall become the owner of the Shopping Center by reason of foreclosure of the Mortgage or otherwise, or if the Shopping Center shall be sold as a result of any action or proceeding to foreclose the Mortgage, or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the then owner of the Shopping Center (the "**New Owner**"), as "Landlord", upon all of the same terms, covenants and provisions contained in the Lease, and in such event:

(a) Tenant shall, subject to the terms of the Lease, be bound to the New Owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the renewal periods, if Tenant elects or has elected to exercise its options to extend the term) and Tenant hereby agrees to attorn and shall be deemed to have attorned to the New Owner and to recognize the New Owner as "landlord" under the Lease and upon the request of New Owner, Tenant shall execute and deliver to New Owner an agreement of attornment in form and content mutually satisfactory to New Owner and Tenant; and

(b) Subject to the provisions of Section 9 of this Agreement, New Owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the renewal periods, if Tenant elects or has elected to exercise its options to extend the term) and New Owner hereby agrees to assume and perform such terms, covenants and provisions and Tenant shall, from and after the date such New Owner succeeds to the interest of "landlord" under the Lease, have the same remedies against New Owner for the breach of any covenant contained in the Lease that Tenant might have had under the Lease against Landlord if New Owner had not succeeded to the interest of Landlord, provided, however, that New Owner shall not be (i) bound by any rent or additional rent which Tenant might have paid for more than one month in advance to any prior landlord (including Landlord), except that the New Owner shall be bound by and subject to set off rights of Tenant specifically allowed in the Lease ("Lease Set-Offs"); (ii) bound by any amendment, cancellation, surrender, termination (unless made pursuant to the terms of this Lease) or modification of the Lease made without Mortgagee's consent; (iii) liable to Tenant for any act or omission of any prior landlord; (iv) be subject to any offset or defense which Tenant might have against any prior landlord, except that the New Owner shall be bound by and subject to Lease Set-Offs; (v) liable to Tenant for any liability or obligation of any prior landlord occurring prior to the date that New Owner acquired title to the property subject to the Mortgage, except (x) that the New Owner shall be bound by and subject to Lease Set-Offs, (vi) be liable to Tenant for any security or other deposits given to secure the performance of Tenant's obligations under the Lease, except to the

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extent that Mortgagee shall have acknowledged actual receipt of such security or other deposits in writing.

5. Default Notices. The Tenant shall use reasonable efforts to give Mortgagee copies of all notices given by Tenant to Landlord relating to defaults on the part of Landlord under the Lease that would give rise to Tenant's right to terminate the Lease.

6. Mortgagee's Right to Cure. In the event of any act or omission by Landlord which would give Tenant the right, either immediately or after the lapse of a period of time, to terminate the Lease, or to claim a partial or total eviction, the Tenant will not exercise any such right (i) until it has sent written notice of such act or omission to Mortgagee as provided herein, and (ii) until a fifteen (15) day period for remedying such act or omission shall have elapsed following the giving of such notice; provided, however, that if such default cannot with diligence be cured by Mortgagee within such fifteen (15) day period, the commencement of action by Mortgagee within such fifteen (15) day period to remedy the same shall be deemed sufficient so long as Mortgagee pursues such cure with diligence (but in no event more than sixty (60) days following the time that Landlord has under the Lease to cure or remedy the same); except as set forth in Section 4(b) of this Agreement, nothing herein contained shall be construed, however, to obligate Mortgagee to cure any default by the Landlord under the Lease occurring prior to the date on which Mortgagee shall succeed to the rights of Landlord, it being expressly agreed that, except as set forth in such section, Mortgagee shall not be obligated to remedy any such default.

7. Notices. Any notice, request, approval, consent, waiver or discharge given or required to be given under this Agreement shall be in writing and shall be deemed to have been given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, or by express carrier or overnight carrier, to the other Party at the address stated below or at the last changed address given by the Party to be notified as hereinafter specified:

|               |   |
|---------------|---|
| To Mortgagee: | WELLS FARGO BANK, NATIONAL<br>ASSOCIATION<br>Real Estate Banking Group (AU#63650)<br>1800 Century Park East, 12 <sup>th</sup> Floor<br>Los Angeles, California 90067<br>Attn: Karen Whitehead |
| To Tenant:    | NORDSTROM, INC.<br>1700 Seventh Avenue, Suite 1000<br>Seattle, Washington 98101-4407<br>Attn: Real Estate Notices, Store #289   |
| To Landlord:  | FASHION OUTLETS OF CHICAGO LLC<br>c/o The Macerich Company<br>401 Wilshire Boulevard, Suite 700<br>Santa Monica, California 90401<br>Attn: Chief Legal Officer                                |

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Either party may at any time change its address for notification purposes by mailing or sending as aforesaid a notice stating the change and setting forth the new address, provided, however, that at no time shall Mortgagee or Tenant be obligated to give notification to more than three (3) addressees. Payment of rent and other charges payable by Tenant pursuant to this Lease shall be made to the principal office as may be designated from time to time by Mortgagee, provided, however, that Mortgagee may at no time designate more than one principal office.

8. Successors. This Agreement shall bind and inure to the benefit of and be binding upon and enforceable by the parties hereto and their respective successors and assigns.

9. Default by Tenant. Notwithstanding the provisions of this Agreement, Landlord, its successors and assigns, including any New Owner, shall not be estopped from taking such action as may be available to Landlord under the terms of the Lease in the event that Tenant shall default in performance of its obligations under the terms of the Lease.

10. Entire Agreement. This Agreement contains the entire agreement between the parties and cannot be changed, modified, waived or canceled except by an agreement in writing executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

11. Agreement Runs With Land. This Agreement and the covenants herein contained are intended to run with and bind all lands affected thereby.

12. Counterparts. This Agreement may be signed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument. The signature of a Party to any counterpart may be removed and attached to any other counterpart. Any counterpart to which the signatures of all Parties are attached shall constitute an original of this Agreement.

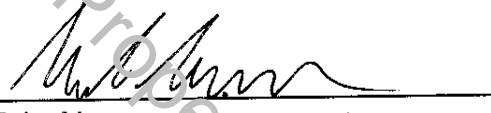
13. Subsequent Transfer. New Owner will have no liability or responsibility for any obligations under the Lease that arise subsequent to any transfer of the Shopping Center by New Owner.

14. Assignment of Rents. Upon receipt by Tenant of written notice from Mortgagee that Mortgagee has elected to terminate the license granted to Landlord to collect rents, as provided in the Deed of Trust, and directing the payment of rents by Tenant to Mortgagee, Tenant shall comply with such direction to pay and shall not be required to determine whether Landlord is in default under the Loan and/or the Deed of Trust.

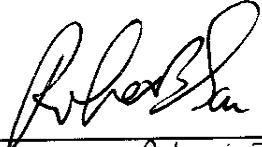
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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

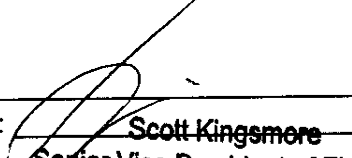
**MORTGAGEE**  
WELLS FARGO BANK, NATIONAL  
ASSOCIATION

By   
Print Name: Mark Loewen  
Its: Senior Vice President

**TENANT**  
NORDSTROM, INC.

By   
Print Name: Robert B. San  
Its: EVP, General Counsel & Corporate Secretary

**LANDLORD**  
FASHION OUTLETS OF CHICAGO LLC,  
a Delaware limited liability company

By   
Print Name: Scott Kingsmore  
Its: Senior Vice President of Finance

[Notary Blocks on Following Page]



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## MORTGAGEE ACKNOWLEDGEMENT

STATE OF CALIFORNIA )  
COUNTY OF Los Angeles )

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.

On 8-14-15, before me, WENDY BINEV, a Notary Public, personally appeared MARK WENSON 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: Wendy Binev







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## LANDLORD ACKNOWLEDGEMENT

STATE OF CALIFORNIA    )  
  )  
COUNTY OF Los Angeles)

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.

On August 10, 2015, 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: 

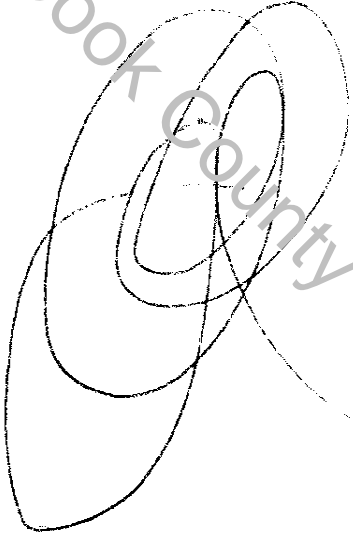


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**EXHIBIT A TO SNDA  
LEGAL DESCRIPTION OF SHOPPING CENTER**

**(attached)**

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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, ACCORDING TO THE PLAT THEREOF 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 FEBRUARY 27, 2012 AND RECORDED MARCH 6, 2012 AS DOCUMENT 1206641162 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, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 6, 1908 AS DOCUMENT NUMBER 4183101 IN COOK 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 AND UTILITY EASEMENT AGREEMENT' DATED FEBRUARY 27, 2012 AND RECORDED MARCH 6, 2012 AS DOCUMENT 1206641162 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

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5. THE LAND REFERRED TO IN THIS POLICY IS DESCRIBED AS FOLLOWS (CONTINUED):

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, 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.

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THE ESTATE OR INTEREST IN THE LAND DESCRIBED BELOW AND COVERED HEREIN IS: THE LEASEHOLD ESTATE (SAID LEASEHOLD ESTATE BEING DEFINED IN PARAGRAPH 1.c. OF THE ALTA LEASEHOLD ENDORSEMENT(S) ATTACHED HERETO), CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS THE LEASE, EXECUTED BY: THE VILLAGE OF ROSEMONT, AN ILLINOIS MUNICIPAL CORPORATION, AS LESSOR, AND FASHION OUTLETS OF CHICAGO LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSEE, DATED FEBRUARY 22, 2012, A MEMORANDUM OF WHICH LEASE WAS RECORDED MARCH 6, 2012 AS DOCUMENT 1206641163, WHICH LEASE DEMISES THE FOLLOWING DESCRIBED LAND FOR A TERM OF YEARS BEGINNING MARCH 6, 2012 AND ENDING NOT LATER THAN DECEMBER 31, 2034.

LOT 2 IN ROSEMONT OUTLET MALL RESUBDIVISION, BEING A RESUBDIVISION OF HENRY HACHMEISTER'S DIVISION, FIRST ADDITION TO B.L. CARLSFN'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

220 Fashion Outlets way

Rosemont, IL 60018

12-09-213-032

12-10-102-016

12-10-102-017

12-09-213-033

12-10-102-018

12-10-102-019

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## EXHIBIT B TO SNDA DEPICTION OF DEMISED PREMISES

(attached)

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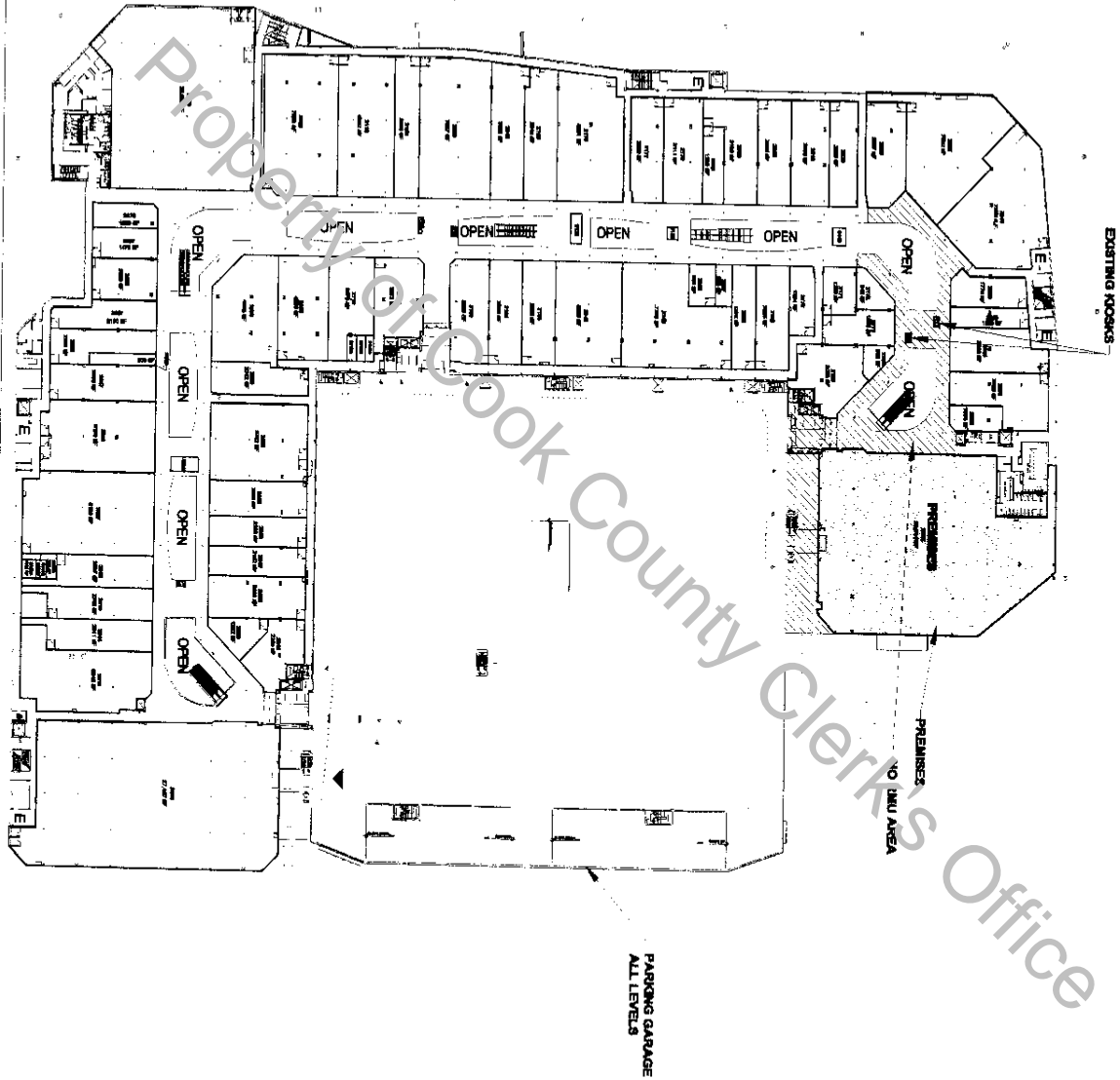


EXHIBIT B  
Second Level



FASHION OUTLETS

Mail Address:  
Fashion Outlets of Chicago  
Rosemont, Illinois

For Leasing  
Information Contact:  
MACERICH  
www.macerich.com

MACERICH  
www.macerich.com

NO IRM AREA

TOTAL FLOOR AREA  
250,568 SF

Note:  
This is a schematic plan only.  
Intended to show the general  
layout of the shopping center or  
parking lot. This plan is not to  
be used for construction.  
LAST UPDATED: 06/14/15  
BY: MFC

MACERICH  
Visit our web site at  
www.macerich.com

EXHIBIT B  
Page 2 of 8  
NORTH