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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



1901045044

Doc# 1901045044 Fee \$222.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 01/10/2019 01:53 PM PG: 1 OF 93

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

Address:

Street: 5220 Fashion Outlets Way

Street line 2:

City: Rosemont

State: IL

ZIP Code: 60018

Lender: METLIFE REAL ESTATE LENDING, LLC, a Delaware limited liability company

Borrower: FASHION OUTLETS OF CHICAGO LLC, a Delaware limited liability company

Loan / Mortgage Amount: \$300,000,000.00

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

COMMONWEALTH LAND TITLE FCN1800282LI
i of 6

Certificate number: 65F14A1A-A28B-4488-AF31-5D4C96FF3EEC

Execution date: 1/10/2019

CRD REVIEW

A handwritten signature in black ink, appearing to be "J. J. J.", written over the "CRD REVIEW" text.

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Prepared by and
upon recordation return to:
Dechert LLP
Cira Centre
2929 Arch Street
Philadelphia, Pennsylvania 19104
Attention: Matthew B. Ginsburg

MetLife Loan No. 703137
Fashion Outlets of Chicago, Rosemont, Illinois

FEE AND LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING

By

FASHION OUTLETS OF CHICAGO LLC,
as Mortgagor ("Borrower")

in favor of

METLIFE REAL ESTATE LENDING, LLC,
as Mortgagee ("Lender")

Property Known As Fashion Outlets of Chicago, Rosemont, Illinois

MetLife Loan No. 703137

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FEE AND LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS FEE AND LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING is made as of January 10, 2019, by FASHION OUTLETS OF CHICAGO LLC ("**Borrower**"), a Delaware limited liability company, having its principal place of business and mailing address in care of The Macerich Company, 401 Wilshire Boulevard, Suite 700, Santa Monica, California 90401, as mortgagor, to METLIFE REAL ESTATE LENDING, LLC, a Delaware limited liability company, having a mailing address at c/o MetLife Real Estate 125 South Wacker, Ste. 100, Chicago, Illinois 60606, Attention: Director – Loan Production ("**Lender**"), as mortgagee.

RECITALS:

A. Lender agreed to make and Borrower agreed to accept a loan (the "**Loan**") in the original principal amount of \$300,000,000.00.

B. To evidence the Loan, Borrower executed and delivered to Lender the promissory note, dated as of the date hereof, in the principal amount of \$300,000,000.00 (the "**Note**").

C. To secure the Note, this Security Instrument encumbers, among other things, Borrower's fee and leasehold interest in the real property located in Rosemont, Illinois, more particularly described in **Exhibit A-1** and **Exhibit A-2** (individually and/or collectively as the context may require, the "**Land**").

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1. Definitions. Capitalized terms used in this Security Instrument are defined in **Exhibit B** or in the text with a cross-reference in **Exhibit B**.

Section 1.2. Rules of Construction. This Security Instrument will be interpreted in accordance with the rules of construction set forth in **Exhibit C**.

ARTICLE II

GRANTING CLAUSES

Section 2.1. Encumbered Property. Borrower irrevocably grants, mortgages, warrants, conveys, assigns and pledges to Lender, and grants to Lender and its successors and assigns a security interest in, the following property, rights, interests and estates now or in the future owned, leased or held by Borrower (the "**Property**") for the uses and purposes set forth in this Security Instrument forever (capitalized terms used in this **Section 2.1** and **2.3** and not defined in this Security Instrument have the meanings ascribed to them in the Uniform Commercial Code):

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- (i) (A) Borrower's fee interest in the Land described in Exhibit A-1 and (B) all of Borrower's right, title and interest in the Ground Lease and the leasehold interests created pursuant to the Ground Lease Documents in the Land described in Exhibit A-2 (collectively, the "Ground Lease Land");
- (ii) all buildings and improvements located on the Land (the "Improvements");
- (iii) all easements; rights of way or use, including any rights of ingress and egress; streets, roads, ways, sidewalks, alleys and passages; strips and gores; sewer rights; water, water rights, water courses, riparian rights and drainage rights; air rights and development rights; oil and mineral rights; and tenements, hereditaments and appurtenances, in each instance adjoining or otherwise appurtenant to or benefiting the Land or the Improvements;
- (iv) all General Intangibles (including Software) and Goods, related to, attached to, contained in or used in connection with the Land or the Improvements (excluding personal property owned by tenants (other than personal property owned by Borrower as tenant under the Ground Lease) and excluding, in all instances, the trademarks and/or trade names of "Macerich", "The Macerich Company", and any derivatives or variations thereof);
- (v) all agreements, ground leases, grants of easements or rights-of-way, permits, declarations of covenants, conditions and restrictions, disposition and development agreements, planned unit development agreements, cooperative, condominium or similar ownership or conversion plans, management, leasing, brokerage or parking agreements or other material documents affecting Borrower or the Property, including the documents described on Exhibit D, the Leases, the Ground Lease, any reciprocal easement agreement or similar document executed by Borrower in connection with the Expansion Connection ("Expansion REA"), the Master Lease Agreement and the Ground Lease Documents (the "Property Documents"); provided, however, the definition of Property Documents shall expressly exclude the Leases, the Expansion REA, the Master Lease Agreement, the Ground Lease, and the Ground Lease Documents);
- (vi) all Inventory held for sale, lease or resale or furnished or to be furnished under contracts of service, or used or consumed in the ownership, use or operation of the Property and all Documents evidencing any part of any of the foregoing;
- (vii) all Accounts, Documents, Goods, Instruments, money, Deposit Accounts, Chattel Paper, Letter-of-Credit Rights, Investment Property, General Intangibles and Supporting Obligations relating to the Property, including all deposits held from time to time by the Accumulations Depository to provide reserves for Taxes and Assessments together with interest credited thereon (the "Accumulations") described in Section 6.2 hereof and all accounts established to maintain the deposits together with investments thereof and interest credited thereon;
- (viii) all awards and other compensation paid after the date of this Security Instrument for any Condemnation (the "Condemnation Awards");

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(ix) all proceeds of and all unearned premiums on the Policies (the “Insurance Proceeds”);

(x) all licenses, certificates of occupancy, contracts, management agreements, operating agreements, operating covenants, franchise agreements, permits and variances relating to the Property;

(xi) all books, records and other information, wherever located, which are in Borrower’s possession, custody or control or to which Borrower is entitled at law or in equity and which are related to the Property, including all computer hardware and software or other equipment used to record, store, manage, manipulate or access the information; and

(xii) all after-acquired title to or remainder or reversion in any of the property described in this Section; all proceeds (excluding, however, sales or other dispositions of Inventory in the ordinary course of the business of operating the Land or the Improvements), replacements, substitutions, products, accessions and increases of or for the Property; all additions, accessions and extensions to, improvements of or for the Property; and all additional lands, estates, interests, rights or other property acquired by Borrower after the date of this Security Instrument for use in connection with the Land or the Improvements, all without the need for any additional deed, mortgage, assignment, pledge or conveyance to Lender but Borrower will execute and deliver to Lender, upon Lender’s request, any documents reasonably requested by Lender to further evidence the foregoing.

Section 2.2. Habendum Clause. The Property is conveyed to Lender to have and to hold forever, subject to the terms, covenants and conditions of this Security Instrument.

Section 2.3. Security Agreement.

(a) The Property includes both real and personal property and this Security Instrument is a real property mortgage and also a “security agreement” and a “financing statement” within the meaning of the Uniform Commercial Code. By executing and delivering this Security Instrument, Borrower grants to Lender, as security for the Obligations, a security interest in the Property to the full extent that any of the Property may be subject to the Uniform Commercial Code.

(b) This Security Instrument constitutes a fixture filing under the Laws of the state or commonwealth in which the Property is located and for such purpose, Borrower represents, as of the date hereof, that the following information set forth in clauses (i), (v) and (vi), is true and correct:

(i) The exact legal name and address of Borrower, as debtor, is:

Fashion Outlets of Chicago LLC, c/o The Macerich Company, 401 Wilshire Boulevard, Suite 700, Santa Monica, California 90401

(ii) Name and address of Lender, as secured party, is:

MetLife Real Estate Lending LLC, c/o MetLife Real Estate, 125 South Wacker, Ste. 100, Chicago, Illinois 60606

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(iii) Description of the types (or items) of property covered by this Financing Statement: all of the property described in Section 2.1(ii)-(xii) described or referred to herein and included as part of the Property.

(iv) Description of real estate to which collateral is attached or upon which it is located: Described in Exhibit A-1 and Exhibit A-2.

(v) Borrower's Organizational Identification Number: 4667675.

(vi) Borrower's chief executive office is located in the State of California, and Borrower's state of formation is the State of Delaware.

Lender may file this Security Instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Security Instrument or of any other security agreement or financing statement is sufficient as a financing statement.

Section 2.4. Conditions to Grant. This Security Instrument is made on the express condition that if Borrower pays and performs the Obligations in full in accordance with the Loan Documents, then, unless expressly provided otherwise in the Loan Documents, the Loan Documents will be released and reconveyed at Borrower's expense.

ARTICLE III

OBLIGATIONS SECURED

Section 3.1. The Obligations. This Security Instrument secures the Principal, the Interest, the Late Charges, the Prepayment Premiums, the Expenses, any additional advances made by Lender in connection with the Property or the Loan and all other amounts payable under the Loan Documents (collectively, the "**Debt**") and also secures both the timely payment of the Debt as and when required and the timely performance of all other obligations and covenants to be performed by Borrower under the Loan Documents (collectively, the "**Obligations**").

ARTICLE IV

TITLE AND AUTHORITY

Section 4.1. Title to the Property.

(a) Borrower has and will continue to have good and marketable title in fee simple absolute (except that with respect to the Ground Lease Land, Borrower has and will continue to have good and marketable leasehold title to the Ground Lease Land) to the Land and the Improvements, and good and marketable title to the Fixtures and Personal Property, all free and clear of liens, encumbrances and charges except, in each case, the Permitted Exceptions. To Borrower's knowledge, except as described in the Side Letter, there are no facts or circumstances that might give rise to a lien, encumbrance or charge on the Property.

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(b) Borrower owns and will continue to own all of the other Property free and clear of all liens, encumbrances and charges other than the Permitted Exceptions and the Equipment Leases.

(c) This Security Instrument is and will remain a valid and enforceable first lien on and security interest in the Property, subject only to the Permitted Exceptions.

Section 4.2. Authority.

(a) Borrower is and will continue to be (i) duly organized, validly existing and in good standing under the Laws of the state or commonwealth in which it was formed, organized or incorporated as set forth in Section 2.3 and (ii) duly qualified to conduct business, in good standing, in the state or commonwealth where the Property is located.

(b) Borrower has and will continue to have all approvals required by Law or otherwise and full right, power and authority to (i) own and operate the Property and carry on Borrower's business as now conducted or as proposed to be conducted; (ii) execute and deliver the Loan Documents; (iii) grant, deed, mortgage, warrant the title to, convey, assign and pledge the Property to Lender, pursuant to the provisions of this Security Instrument; and (iv) perform the Obligations.

(c) The execution and delivery of the Loan Documents and the performance of the Obligations do not and will not conflict with or result in a default under any Laws or any Leases or Property Documents and do not and will not conflict with or result in a default under any agreement binding upon any party to the Loan Documents.

(d) The Loan Documents and the Environmental Indemnity constitute and will continue to constitute legal, valid and binding obligations of all parties to the Loan Documents and the Environmental Indemnity, respectively, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency and other limitations on creditor's rights generally and equitable principles.

(e) Borrower has not changed its legal name or its state or commonwealth of formation, as set forth in Section 2.3, in the four months prior to the date hereof, except as Borrower has disclosed any such change to Lender in writing and delivered to Lender appropriate Uniform Commercial Code search reports in connection therewith.

(f) Borrower has not (i) merged with or into any other entity or otherwise been involved in any reorganization or (ii) acquired substantially all of the assets of any other entity where Borrower became subject to the obligations of such entity, for a period of one year ending on the date hereof, except as Borrower has disclosed any such change, merger, reorganization or acquisition to Lender in writing and, delivered to Lender appropriate Uniform Commercial Code search reports in connection therewith.

(g) An Independent Manager has been engaged, appointed and is now an independent manager under the terms of the limited liability company agreement of Borrower and any General Partner.

Section 4.3. No Foreign Person. Borrower is not and will not be (and, if Borrower is a disregarded entity for U.S. federal income tax purposes, the nearest direct or indirect sole owner of

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Borrower that is not disregarded is not and will not be) a “foreign person” within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

Section 4.4. Litigation. There are no Proceedings or, to Borrower’s knowledge, investigations against or affecting Borrower, Borrower’s Affiliates or the Property and, to Borrower’s knowledge, there are no facts or circumstances that might give rise to a Proceeding or an investigation against or affecting Borrower or the Property, in each case, which is reasonably expected to have a material adverse effect on the Property or Borrower or on Lender’s interest in the Property or under the Loan Documents. Borrower will give Lender prompt notice of the commencement of any Proceeding or investigation against or affecting the Property or Borrower which is reasonably expected to have a material adverse effect on the Property or on Lender’s interests in the Property or under the Loan Documents and, at Borrower’s expense, will appear in and defend any such Proceeding or investigation. Borrower also will deliver to Lender such additional information relating to the Proceeding or investigation as Lender may reasonably request from time to time.

ARTICLE V

PROPERTY STATUS, MAINTENANCE AND LEASES

Section 5.1. Status of the Property.

(a) Borrower has obtained and will maintain in full force and effect all certificates, licenses, permits and approvals that are issued or required by Law or by any entity having jurisdiction over the Property or over Borrower or that are necessary for the Permitted Use, for occupancy and operation of the Property, for the granting of this Security Instrument or for the conduct of Borrower’s business on the Property in accordance with the Permitted Use.

(b) The Property is and will continue to be serviced by all public utilities required for the Permitted Use of the Property.

(c) All roads and streets necessary for service of and access to the Property for the current or contemplated use of the Property have been completed and are and will continue to be serviceable, physically open and dedicated to and accepted by the Government for use by the public.

(d) The Property is free from damage caused by a Casualty.

(e) All costs and expenses of labor, materials, supplies and equipment used in the construction of the Improvements which are now due and payable have been paid in full, or will be paid prior to delinquency.

Section 5.2. Maintenance of the Property. Borrower will maintain the Property in thorough repair and good and safe condition, suitable for the Permitted Use, including, to the extent necessary, replacing the Fixtures and Personal Property with property at least equal in quality and condition to that being replaced and free of liens, to the extent replacement is deemed reasonably necessary in the ordinary course of operating the Property for the Permitted Use and provided that there shall be no obligation to replace obsolete Fixtures or Personal Property. Except for Permitted Alterations and the Expansion Connection Work, Borrower will not erect any new buildings,

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building additions or other structures on the Land or otherwise materially alter the Improvements without Lender's prior consent which may be withheld in Lender's sole discretion. In connection with the performance of any Permitted Alterations which, in the aggregate with all other alterations or renovations relating to the Property, exceed a cost equal to \$20,000,000, Borrower will cause Guarantor (or another guarantor acceptable to Lender in its sole discretion) to deliver a guaranty of completion in form and substance acceptable to the Lender, acting reasonably. The Property will be managed by a Qualified Manager or a property manager satisfactory to Lender pursuant to a management agreement satisfactory to Lender and terminable by Borrower without charge or penalty upon 30 days' notice to the property manager. Notwithstanding anything to the contrary herein, or in any Loan Document, the Management Agreement may each be assigned to a Qualified Manager or may be terminated and replaced with a new management agreement with a Qualified Manager consistent with market terms and the requirements of the Loan Documents, in each case without Lender's prior written consent, provided prior notice of the same is provided to Lender, which shall include Borrower's and such Qualified Manager's execution and delivery of an assignment of the management agreement and subordination of management agreement and management fees in form and substance substantially similar to the form of assignment and subordination of management agreement executed and delivered in connection with the closing of the Loan.

Section 5.3. Change in Use. Borrower will use and permit the use of the Property for the Permitted Use and for no other purpose.

Section 5.4. Waste. Borrower will not commit or permit any waste (including economic and non-physical waste), impairment or deterioration of the Property or any material alteration, demolition or removal of any of the Property except as otherwise permitted herein or in connection with Permitted Alterations or the Expansion Connection Work without Lender's prior consent which may be withheld in Lender's sole discretion.

Section 5.5. Inspection of the Property. Subject to the rights of tenants and occupants which are parties to the Leases and the Property Documents, Lender or its agent or independent expert, has the right to enter and inspect the Property on reasonable prior notice, except in the case of an emergency or during the existence of an Event of Default, when no prior notice is necessary. Lender has the right to engage an independent expert to review and report on Borrower's compliance with Borrower's obligations under this Security Instrument and the other Loan Documents to maintain the Property, comply with Law and refrain from waste, impairment or deterioration of the Property and the alteration, demolition or removal of any of the Property except as may be permitted by the provisions of this Security Instrument and the other Loan Documents. If the independent expert's report discloses material failure to comply with such obligations or if Lender engages the independent expert after the occurrence of an Event of Default, then the independent expert's review and report will be at Borrower's expense, payable within ten (10) days of demand; at all other times any such inspection shall be at Lender's sole cost and expense.

Section 5.6. Leases and Rents.

(a) Borrower assigns the Leases and the Rents to Lender absolutely and unconditionally and not merely as additional collateral or security for the payment and performance of the Obligations, but subject to a license back to Borrower of the right to administer the Leases and to

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collect the Rents, which shall terminate automatically during the existence of an Event of Default, all as more particularly set forth in the Assignment, the provisions of which are incorporated in this Security Instrument by reference.

(b) Borrower appoints Lender as Borrower's attorney-in-fact to execute unilaterally and record, at Lender's election, a document subordinating this Security Instrument to the Leases, provided that the subordination will not affect (i) the priority of Lender's entitlement to Insurance Proceeds or Condemnation Awards or (ii) the priority of this Security Instrument over intervening liens or liens arising under or with respect to the Leases.

Section 5.7. Parking. Borrower will provide, maintain, police and light parking areas at the shopping center of which the Property is a part, including any sidewalks, aisles, streets, driveways, sidewalk cuts and rights-of-way to and from the adjacent public streets, in a manner consistent with the Permitted Use and sufficient to accommodate the greatest of: (i) the number of parking spaces required by Law; or (ii) the number of parking spaces required by the Leases and the Property Documents. Except incidental uses, the parking areas will be reserved and used exclusively for ingress, egress, parking and such other uses contemplated by the Leases and/or the Property Documents for Borrower and tenants and occupants under the Leases and the Property Documents and their respective employees, customers and invitees and in accordance with the Leases and the Property Documents.

Section 5.8. Separate Tax Lot. The Property is and will remain assessed for real estate tax purposes as one or more wholly independent tax lots, separate from any property that is not part of the Property.

Section 5.9. Changes in Zoning or Restrictive Covenants. Borrower will not (i) initiate, join in or consent to any change in any Laws pertaining to zoning, any restrictive covenant or other restriction which would restrict the Permitted Uses for the Property; (ii) permit the Property to be used to fulfill any requirements of Law for the construction or maintenance of any improvements on property that is not part of the Property; (iii) permit the Property to be used for any purpose not included in the Permitted Use; or (iv) impair the integrity of the Property as legally subdivided zoning lots separate from all other property not owned or leased by Borrower. The zoning approval for the Property is not dependent upon the ownership or use of any property which is not encumbered by the Security Instrument.

Section 5.10. Lender's Right to Appear. Lender has the right to appear in and defend any Proceeding brought regarding the Property which Lender, in its sole discretion, determines should be brought to protect Lender's interest in the Property, and, during the existence of an Event of Default, Lender has the right to bring any such Proceeding, in the name and on behalf of Borrower or in Lender's name.

Section 5.11. Condemnation. No Condemnation or other proceeding has been commenced, is pending or, to Borrower's best knowledge, is contemplated with respect to all or any portion of the Property or for the relocation of roadways providing access to the Property.

Section 5.12. Insurance. No claims have been made under any of the Policies other than claims (a) for which the underlying matter has not been resolved or is otherwise not insured or (b)

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claims which are not reasonably likely to have a material and adverse effect on the Policies, the Borrower or the Property. No Person, including Borrower, has done, by act or omission, and is not otherwise aware of anything which would impair the coverage of any of the Policies. Borrower has not received notice of any matter which is reasonably likely to give rise to a claim under any of the Policies, which claim is reasonably likely to have a material and adverse effect on the Policies, Borrower or the Property. Borrower has not received notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

Section 5.13. Non-Relationship. Neither Borrower nor any partner, director, member or officer of Borrower nor, to Borrower's knowledge, any other person with a direct or indirect interest in Borrower (excluding Excluded Persons) is (a) a director or officer of any of MetLife, Inc., Metropolitan Life Insurance Company, or Metlife Real Estate Lending LLC, (b) a parent, son or daughter of a director or officer of any of such entities, or a descendent of any of them, (c) a stepparent, adopted child, step-son or step-daughter of a director or officer of any of such entities, or (d) a spouse of a director or officer of any of such entities.

Section 5.14. Expansion Space.

(a) An affiliate of Borrower intends to construct certain retail, entertainment and/or restaurant space on property adjacent to the Property and located at approximately 5400 N River Rd., Rosemont, IL 60018 (the "**Expansion Space**"). Borrower anticipates that a portion of the Expansion Space will be connected to the Property by and through an enclosed pedestrian bridge that would be located, in part, in the premises at the Property currently occupied by Nordstrom Rack (with such portion being referred to as the "**Expansion Connection**"). That portion of the Expansion Space which is not situated within the boundaries of the Property will not be part of, and shall be specifically excluded from, the collateral for the Loan, but any of Borrower's rights under a reciprocal easement agreement or similar agreement with respect to the Expansion Connection or Expansion Space will be collateral for the Loan. Borrower shall be permitted to construct the Expansion Connection, subject to the satisfaction of the following conditions:

- (i) No Event of Default shall have occurred and be continuing;
- (ii) Borrower shall deliver to Lender for Lender's review and approval (not to be unreasonably withheld, conditioned or delayed) the plans and specifications related to the Expansion Connection prior to any work commencing; Lender will approve or disapprove such plans and specifications within 10 Business Days after receipt;
- (iii) Borrower shall enter into a reciprocal easement agreement related to the Expansion Connection, which shall be subject to Lender's prior review and approval, and which shall include a customary cross indemnity provision between the Borrower and the owner of the Expansion Space;
- (iv) The construction of the Expansion Connection shall not create any material physical impediments to the ingress/egress to the Property or impact in a material way the daily operation thereof;

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(v) Any reciprocal easement agreements, shared use agreements or similar documents entered into by Borrower in connection with the Expansion Connection or Expansion Space shall be subject to Lender's review and approval;

(vi) If the Expansion Connection Work is commenced, Borrower and Guarantor shall guaranty the Expansion Liabilities; and

(vii) To the extent undertaken, Borrower shall diligently perform the Expansion Connection Work in a good and workmanlike manner in accordance with applicable legal requirements, the Property Documents, the Leases and the satisfaction of the conditions set forth on Exhibit E;

(b) In connection with the Expansion Connection, Borrower will be permitted to relocate the Nordstrom Rack Space to the Expansion Space and convert the Nordstrom Rack Space into an entrance to the Expansion Connection, provided that simultaneously with the vacation of the Nordstrom Rack Space, Guarantor shall execute and deliver to Lender a Master Lease Agreement for the Nordstrom Rack Space. Additionally, in the event the Borrower elects to relocate any additional tenants to the Expansion Space, the Borrower may do so, provided that simultaneously with the vacation of the space leased by such tenants the Master Lease Agreement shall be amended to apply to those affected premises; provided, however, that (i) Borrower may not relocate a tenant leasing 15,000 square feet or greater to the Expansion Space (other than the Nordstrom Rack space) and (ii) Borrower may not relocate then-existing tenants leasing a combined 25,000 square feet or greater (exclusive of the Nordstrom Rack Space) to the Expansion Space. The rent payable under the Master Lease will be equal to the gross rent that has been displaced by the relocation of tenants to the Expansion Space. The Master Lease Agreement will be reduced as and to the extent the rent from the displaced tenants is replaced and the Master Lease Agreement will terminate, in full, upon the full replacement of displaced rents. Borrower shall not amend, modify or terminate the Master Lease without the prior written consent of Lender.

ARTICLE VI

IMPOSITIONS AND ACCUMULATIONS

Section 6.1. Impositions.

(a) Borrower will pay, or cause to be paid, each Imposition at least 15 days before the date (the "Imposition Penalty Date") that is the earlier of (i) the date on which the Imposition becomes delinquent and (ii) the date on which any penalty, interest or charge for non-payment of the Imposition accrues.

(b) Promptly following payment of any Imposition, Borrower will deliver to Lender or its designated agent a receipted bill or other evidence of payment.

(c) Borrower, at its own expense, may contest any Taxes or Assessments, provided that the following conditions are met:

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(i) if Borrower wants Lender or Lender's designated agent to withhold payment of the contested Taxes and Assessments, not less than 30 days prior to the Imposition Penalty Date, Borrower delivers to Lender notice of the proposed contest;

(ii) the contest is by a Proceeding initiated and conducted diligently and in good faith;

(iii) there is no Event of Default continuing;

(iv) if payment of the contested Taxes or Assessments is being withheld, then the Proceeding suspends the collection of the contested Taxes or Assessments;

(v) the Proceeding is permitted under and is conducted in accordance with the Leases, the Expansion REA and the Property Documents;

(vi) the Proceeding precludes imposition of criminal or civil penalties and sale or forfeiture of the Property and Lender will not be subject to any civil suit as a result thereof; and

(vii) Borrower either deposits with the Accumulations Depository reserves or furnishes a bond or other security satisfactory to Lender, in either case in an amount sufficient to pay the contested Taxes or Assessments, together with all interest and penalties or Borrower pays all of the contested Taxes or Assessments under protest.

(d) Installment Payments. If any Assessment is payable in installments, Borrower will nevertheless pay the Assessment in its entirety on the day the first installment becomes due and payable or a lien, unless Lender, in its sole discretion, approves payment of the Assessment in installments.

(e) Intentionally Omitted.

(f) Direct Payment by Tenants. Nothing herein or in any other Loan Document shall be construed as a limitation on Borrower's ability to permit certain tenants to pay a portion of the Taxes directly to the taxing authority in accordance with the terms of such tenants' respective Leases, provided the same shall not release Borrower from its obligation to cause the full payment of all Taxes as provided herein.

Section 6.2. Accumulations.

(a) Subject to the provisions of Section 6.2(h), on the first Business Day of each calendar month during the Term, Borrower will deposit with either Lender or a mortgage servicer or financial institution designated by Lender from time to time, acting on behalf of Lender as Lender's agent or otherwise such that Lender is the "customer", as defined in the Uniform Commercial Code, of the depository bank with respect to the deposit account into which the Accumulations are deposited, to receive, hold and disburse the Accumulations (the "Accumulations Depository") an amount equal to 1/12th of the portion of the annual Taxes and Assessments for the Property directly payable by Borrower, as determined by Lender or its agent. At least 30 days before each Imposition Penalty

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Date, Borrower will deliver to the Accumulations Depository any bills and other documents that are necessary to pay the Taxes and Assessments.

(b) The Accumulations will be applied to the payment of Taxes and Assessments in accordance with this Security Instrument. Any excess Accumulations after payment of Taxes and Assessments (calculated after giving effect to the payments made by all parties paying Taxes and Assessments) will be promptly returned to Borrower or credited against future payments of the Accumulations, at Lender's election or as required by Law. If the Accumulations are not sufficient to pay Taxes and Assessments, Borrower shall promptly pay the deficiency to the Accumulations Depository (and in any event, not less than 10 Business Days prior to the Imposition Penalty Date).

(c) The Accumulations Depository will hold the Accumulations as security for the Obligations until applied in accordance with the provisions of this Security Instrument, the other Loan Documents and any other agreement between Borrower and Lender. If Lender is not the Accumulations Depository, the Accumulations Depository will deliver the Accumulations to Lender upon Lender's demand at any time during an Event of Default.

(d) If the Property is sold or conveyed other than by foreclosure or transfer in lieu of foreclosure, all right, title and interest of Borrower to the Accumulations then remaining with the Accumulations Depository will automatically, and without necessity of further assignment, be held for the account of the new owner, subject to the provisions of this Section and Borrower will have no further interest in the Accumulations.

(e) The Accumulations Depository has deposited the initial deposit and will deposit the monthly deposits into an account with a financial institution selected by Lender, which funds may be commingled with other funds controlled by Lender or Lender's agent.

(f) Lender has the right to pay, or to direct the Accumulations Depository to pay, any Taxes or Assessments unless Borrower is contesting the Taxes or Assessments in accordance with the provisions of this Security Instrument, in which event any payment of the contested Taxes or Assessments will be made under protest in the manner prescribed by Law or, at Lender's election, will be withheld.

(g) If Lender assigns this Security Instrument, Lender will pay or cause the Accumulations Depository to pay, the unapplied balance of the Accumulations to or at the direction of the assignee. Simultaneously with the payment, Lender and the Accumulations Depository will be released from all liability with respect to the Accumulations and Borrower will look solely to the assignee with respect to the Accumulations. When the Obligations have been fully satisfied, any unapplied balance of the Accumulations will be returned to Borrower. During an Event of Default, Lender may apply the Accumulations as a credit against any portion of the Debt selected by Lender in its sole discretion.

(h) Notwithstanding the foregoing provisions of this Section 6.2, the requirement for Borrower to escrow for Taxes shall be waived and such waiver shall remain in effect provided that no Event of Default has occurred and is continuing, provided, however, that after the occurrence of a third Event of Default over the term of this Loan, Lender shall have the right to require an escrow for Taxes notwithstanding the absence of a continuing Event of Default. If an Event of Default shall

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occur, at Lender's option, Borrower shall immediately commence to make deposits to Lender, or as designated pursuant to a tax reserve agreement entered into at Borrower's sole cost and expense and reasonably acceptable to Lender in accordance with the foregoing provisions of Section 6.2. The initial deposit shall be in an amount not less than the amount that would have been on deposit had the requirement for the escrow of Taxes not been waived. This waiver is personal to the Borrower and in the event of a Loan Assumption pursuant to Section 12.2(b) hereof, this waiver shall be revoked and of no further force and effect from and after the occurrence of such Loan Assumption.

Section 6.3. Changes in Tax Laws. If a Law requires the deduction of the Debt from the value of the Property for the purpose of taxation or imposes a tax, either directly or indirectly, on the Debt, any Loan Document or Lender's interest in the Property, Borrower will pay the tax with interest and penalties, if any. If Lender determines that Borrower's payment of the tax may be unlawful, unenforceable, usurious or taxable to Lender, the Debt will become immediately due and payable on 120 days' prior notice without any Prepayment Premium unless the tax must be paid within the 120-day period, in which case, the Debt will be due and payable within the lesser period.

ARTICLE VII

INSURANCE, CASUALTY, CONDEMNATION AND RESTORATION

Section 7.1. Insurance Coverages.

(a) Insurance Coverage:

(i) Borrower will maintain such insurance coverages and endorsements in form and substance as Lender may require from time to time, subject to clause (iv) below. The insurance will be in an amount equal to 100% of the full replacement cost of the Improvements and Personal Property, insure against any peril now or hereafter included within the classification "All Risk" or "Special Perils," and a minimum twenty-four (24) months business interruption with an Extended Period of Indemnity of twelve (12) months (without deduction for depreciation including but not limited to fire, extended coverage, vandalism, malicious mischief, sprinkler leakage, boiler and machinery, ordinance or law, terrorism coverage, operation of building laws, demolition costs, increased cost of construction, windstorm (including coverage for Named Storms and provided that the deductible for windstorm coverage shall not exceed the greater of (i) \$250,000.00 or (ii) five percent (5%) of the Full Replacement Cost), earthquake and flood insurance (if located in an area identified as an earthquake zone 3 or 4 or flood zone A or V), day care facility liability coverage, with no exclusions for sexual abuse/molestation, where applicable, when any portion of the Property is used as a day care or childcare services facility, and a minimum twenty-four (24) months business interruption with an Extended Period of Indemnity of twelve (12) months (the amount of such business interruption insurance shall be increased from time to time during the term of the Loan as and when new leases and renewal leases are entered into and rents payable increase or the annual estimate of gross income from occupancy of the Property increases to reflect such rental increases)). Notwithstanding the foregoing, the business interruption requirement may be satisfied with an "actual loss sustained but with not less than twenty-four (24) months" and with an Extended Period of

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Indemnity for twelve (12) months. The insurance will also include commercial general liability coverage, on the so-called "occurrence" form, including Terrorism coverage, in substance and amount not less than \$50,000,000.00 per occurrence naming Lender as an additional insured and such insurance to cover at least the following hazards: (a) premises and operations; (b) products and completed operations on an "if any" basis; (c) independent contractors; (d) blanket contractual liability for all written and oral contracts; (e) contractual liability covering the indemnities contained in this Agreement and the other Loan Documents to the extent available; and (f) if applicable, liquor liability. Until Lender notifies Borrower of changes in Lender's requirements, Borrower will maintain not less than the insurance coverages and endorsements Lender required for closing of the Loan. Notwithstanding anything to the contrary herein, any insurance coverage maintained by Borrower may be maintained as a blanket policy. If the Property is located in an area for potential catastrophic loss, upon request to be made at not more than once per annum, Borrower shall deliver to Lender a list of locations covered under such a blanket policy in the state where the Property is located and their insurable values and a Natural Hazard Loss Analysis Report (it being acknowledged that Lender has accepted the Natural Hazard Loss Analysis Report delivered by Borrower in connection with the closing of the Loan). Borrower shall be required to maintain insurance against all losses, damages, costs, expenses, claims and liabilities related to or arising from acts of terrorism, of such types at full replacement cost limits, with such deductibles as set forth herein. Notwithstanding the foregoing, if Terrorism Risk Insurance Program Reauthorization Act of 2015 ("**TRIPRA**"), or a similar statute extension or reauthorization is not in effect, Borrower will be required to maintain Terrorism insurance at full replacement cost or at minimum in such amounts as available at a premium cost for terrorism insurance which equal to that of two times the amount paid at the Property during the then current insurance period for the All-Risk Property (property and loss of rents/business interruption coverage) and Liability insurance required. Terrorism insurance may be provided under a blanket policy or a stand-alone policy, provided the form and issuing company are consistent with the requirements herein or are otherwise approved by Lender.

(ii) The "Full Replacement Cost" for purposes of this Section 7.1 shall mean the estimated total cost of construction required to replace the Improvements with a substitute of like utility, and using modern materials and current standards, design and layout. For purposes of calculating Full Replacement Cost direct (hard) costs shall include, without limitation, labor, materials, supervision and contractor's profit and overhead and indirect (soft) costs may include, without limitation, fees for architect's plans and specifications, construction financing costs, permits, sales taxes, insurance and other such costs customarily included in the Marshall Valuation Service published by Marshall & Swifts.

(iii) Earthquake insurance is required, if the Property is in UBC Zone 3 or 4, from or against all losses, damages, costs, expenses, claims and liabilities related to or arising from earthquake on such form of insurance policy as required by Lender and in an amount equal to the Probable Maximum Loss (Scenario Upper Loss), as determined by a qualified seismic engineer, times the replacement cost, and provided that the deductible for earthquake coverage shall not exceed the greater of (i) \$250,000.00 or (ii) five percent (5%) of the Full Replacement Cost.

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(iv) During the period of any construction or renovation or alteration of the Improvements, and only if the Property insurance form does not otherwise provide coverage, a so-called "Builder's All Risk" insurance policy in non-reporting form for any Improvements under construction, renovation or alteration including, without limitation, for demolition and increased cost of construction or renovation, in an amount approved by Lender including an occupancy endorsement and worker's compensation insurance covering all persons engaged in the construction, renovation or alteration in an amount at least equal to the minimum required by statutory limits of the State of Illinois.

(v) Workers' Compensation insurance, subject to the statutory limits of the State, and employer's liability insurance with a limit of at least \$1,000,000 per accident and per disease per employee, and \$1,000,000 for disease in the aggregate in respect of any work or operation on or about the Property, or in connection with the Property or its operations (if applicable)

(vi) Boiler & Machinery, or Equipment Breakdown Coverage, insurance covering the major components of the central heating, air conditioning and ventilating systems, boilers, other pressure vessels, high pressure piping and machinery, elevators and escalators, if any, and other similar equipment installed in the Improvements, in an amount equal to one hundred percent (100%) of the full replacement cost of all equipment installed in, on or at the Improvements. These policies shall insure against physical damage to and loss of occupancy and use of the Improvements arising out of an accident or breakdown.

(vii) Business Automobile Insurance with a combined single limit of not less than \$1,000,000 per occurrence for bodily injury and property damage arising out of the use of owned, non-owned, hired and/or leased automotive equipment when such equipment is operated by Borrower, Borrower's employees or Borrower's agents in connection with the Property.

(viii) Such other insurance as may from time to time be required by Lender to provide coverage against any hazard, which as of the date hereof is insured against under any of the insurance policies described in this Section 7.1 and as may from time to time be reasonably required by Lender against other insurable hazards, provided the same are commonly required by Lenders with respect to, and maintained by similarly situated borrowers with similarly situated properties in the same geographic region, at Lender's discretion.

(b) The insurance, including renewals, required under this Section 7.1 will be issued on valid and enforceable policies and endorsements satisfactory to Lender (the "Policies"). Each Policy will contain a standard waiver of subrogation and a replacement cost endorsement and will provide that Lender will receive not less than 30 days' prior written notice of any cancellation, termination or non-renewal of a Policy or any material change other than an increase in coverage and that Lender will be named under a standard mortgagee endorsement on the property insurance as mortgagee and loss payee. Each policy will provide for no-coinsurance limitations or also contain an agreed amount endorsement waiving all co-insurance provisions and containing no margin clause unless approved by Lender with respect to the Improvements and Personal Property and providing for no deductible in excess of \$100,000.00, except for named windstorm which may have a deductible of 5% of the

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total insurable value subject to a \$100,000.00 minimum, or flood which may have a deductible of \$250,000.00 or earthquake coverage which may have a deductible as set forth above. Each Policy (other than the commercial general liability Policy and the Business Automobile Insurance) shall identify Lender under the New York Standard Mortgagee Clause (non-contributory) endorsement. The commercial general liability Policy and the Business Automobile Insurance shall name Lender as an additional insured.

(c) The insurance companies issuing the Policies (the “**Insurers**”) must be authorized to do business in the State of New York and the State or Commonwealth where the Property is located, must carry an A.M. Best Company, Inc. policy holder rating of A or better and an A.M. Best Company, Inc. financial category rating of Class X or better or must be otherwise satisfactory to Lender. Coverage may be provided by an AM Best “Excellent” rated company with a financial size of “VIII”, so long as the carriers below “X” do not make up more than 10% of the total Property insurance program and are not in the primary or first excess layer of coverage. Notwithstanding the foregoing, Hallmark Specialty Insurance Co. insuring the Primary \$2,500,000.00 of the All-Risk Property Coverage is acceptable as long as their rating does not fall below their current AM Best rating of “A;IX” and they do not increase the \$2,500,000.00 limit they provide. So called “Cut-through” endorsements shall not be permitted without Lenders approval. Notwithstanding Lender’s right to approve the Insurers, Lender will not be responsible for the solvency of any Insurer. So-called “cut through” endorsements shall not be permitted unless approved by Lender.

(d) Notwithstanding Lender’s rights under this Article VII, Lender will not be liable for any loss, damage or injury resulting from the inadequacy or lack of any insurance coverage.

(e) Borrower will comply with the provisions of the Policies and with the requirements, notices and demands imposed by the Insurers and applicable to Borrower or the Property.

(f) Subject to Section 13.4, Borrower will timely pay the insurance premiums for each Policy and provide Lender with evidence of such payment no later than the premium due date of any Policy being replaced or renewed and Borrower will deliver to Lender a certified copy of each Policy no later than the expiration date of the Policy being replaced or renewed. In the event Borrower is unable to deliver a certified copy of such Policy prior to the expiration date, Borrower will provide Lender with certificates of insurance, requested documentation and applicable portions of the Policies acceptable to Lender, until a certified copy of the Policy is available and provided to Lender. Notwithstanding anything in this Section 7.1 to the contrary, if Lender is brought into a claim or suit with respect to any insurance coverage or any Policy, Borrower will provide a copy of the applicable Policy or Policies.

(g) Borrower will not carry separate insurance concurrent in kind or form or contributing in the event of loss with any other insurance carried by Borrower.

(h) If Borrower elects to carry any of the insurance required under this Section on a blanket or umbrella policy, Borrower will deliver to Lender a certified copy of the blanket policy (and in the event such blanket policy is provided by multiple carriers, this requirement shall be satisfied upon Lender’s receipt of the primary Policy only), which shall provide the same coverage and protection as would a separate policy insuring only the Property.

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(i) Borrower will give the Insurers and Lender prompt notice of any change in ownership or occupancy of the Property that may result in a change in the insurance requirements for the Property. This subsection (i) does not abrogate the prohibitions on transfers set forth in this Security Instrument.

(j) To the extent the insurance requirements in this Section are satisfied using a stand-alone policy(ies) covering only the Property, then in the event of the foreclosure of this Security Instrument or other transfer of the title to the Property, all right, title and interest of Borrower in and to such insurance policy(ies), or premiums or payments in satisfaction of claims or any other rights under these insurance policy(ies) shall pass to the transferee of the Property. Notwithstanding the foregoing to the extent the insurance requirements in this Section are satisfied using a blanket policy then in the event of the foreclosure of this Security Instrument or other transfer of the title to the Property, all right, title and interest of Lender in and to any premiums or payments in satisfaction of claims or any other rights under such insurance policy(ies) relating to the Property shall pass to the transferee of the Property. If any policy referred to in this Section 7.1 is written on a blanket basis, a list of locations within the state in which the Property is located and their insurable values shall be provided, as requested by Lender.

(k) Borrower shall insure or shall cause to be insured (with Lender to be named as an additional insured) the Expansion Connection pursuant to policies consistent with those required under this Section 7.1.

Section 7.2. Casualty and Condemnation

(a) Borrower will give Lender notice of any Casualty promptly after it occurs and will give Lender notice of any Condemnation Proceeding promptly after Borrower receives notice of commencement or notice that such a Condemnation Proceeding will be commencing, provided, such notice shall be waived so long as no Event of Default exists and so long as the amount of Insurance Proceeds or Condemnation Award (as applicable) reasonably expected to be received in connection therewith is less than \$1,000,000.00. Borrower promptly will deliver to Lender copies of all documents Borrower delivers or receives relating to the Casualty or the Condemnation Proceeding, as the case may be.

(b) Subject to Section 7.5 hereof, with respect to any Casualty which would reasonably be expected to result in the receipt of Proceeds exceeding \$7,000,000.00 (the "**Casualty Threshold**"), Borrower authorizes Lender, at Lender's option, to participate with Borrower in, and reasonably approve, the collection, adjustment and compromise of any claims for loss, damage or destruction under the Policies, provided that Borrower authorizes Lender, at Lender's option, to act on Borrower's behalf to collect, adjust and compromise any claims for loss, damage or destruction under the Policies on such terms as Lender determines in Lender's sole discretion with respect to any Casualty (i) which would reasonably be expected to result in the receipt of Proceeds exceeding \$15,000,000.00 to the extent the Sponsor Control Test is not then satisfied at the time of the applicable Casualty, or (ii) which occurs while an Event of Default exists. With respect to any Condemnation Proceeding which would reasonably be expected to result in the receipt of Condemnation Awards exceeding \$7,000,000.00 (the "**Condemnation Threshold**"), Borrower authorizes Lender, at Lender's option, to participate with Borrower in the applicable Condemnation Proceeding, provided that Borrower authorizes Lender, at Lender's option, to act on Borrower's

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behalf in connection with any Condemnation Proceeding (i) which would reasonably be expected to result in the receipt of Condemnation Awards exceeding \$15,000,000.00 to the extent the Sponsor Control Test is not then satisfied at the time of the applicable Condemnation Proceeding, or (ii) which occurs while an Event of Default exists. Borrower will execute and deliver to Lender all documents requested by Lender and all documents as may be required by Law to confirm such authorizations. Nothing in this Section 7.2 will be construed to limit or prevent Lender from joining with Borrower either as a co-defendant or as a co-plaintiff in any Condemnation Proceeding.

(c) If Lender elects not to act on Borrower's behalf as provided in this Section, then Borrower promptly will file and prosecute all claims (including Lender's claims) relating to the Casualty and will prosecute or defend (including defense of Lender's interest) any Condemnation Proceeding. Borrower will have the authority to settle or compromise the claims or Condemnation Proceeding, as the case may be, provided that Lender has approved in Lender's sole discretion any compromise or settlement that exceeds \$7,000,000.00. Any check for Insurance Proceeds or Condemnation Awards, as the case may be (the "**Proceeds**"), in excess of the Casualty Threshold or Condemnation Threshold, as applicable, will be made payable to Lender and Borrower. Borrower will endorse the check to Lender immediately upon Lender presenting the check to Borrower for endorsement or if Borrower receives the check first, will endorse the check immediately upon receipt and forward it to Lender. If any Proceeds in excess of the Casualty Threshold or Condemnation Threshold, as applicable, are paid to Borrower, Borrower will immediately deposit the Proceeds with Lender, to be applied or disbursed in accordance with the provisions of this Security Instrument. Lender will be responsible for only the Proceeds actually received by Lender. Notwithstanding anything to the contrary herein or in any other Loan Document, provided no Event of Default exists, Proceeds arising from any single Casualty or Condemnation Proceeding equal to or less than the Casualty Threshold or Condemnation Threshold, as applicable, shall be paid directly to Borrower for Borrower's application to the Restoration of the Property.

Section 7.3. Application of Proceeds. Subject to the provisions of Section 7.4 and Section 7.5 hereof, after deducting the costs incurred by Lender in collecting the Proceeds, Lender may, in its sole discretion, (i) apply the Proceeds as a credit against any portion of the Debt selected by Lender in its sole discretion; (ii) apply the Proceeds to Restoration of the Improvements, provided that Lender will not be obligated to see to the proper application of the Proceeds and provided further that any amounts released for Restoration will not be deemed a payment on the Debt; or (iii) deliver the Proceeds to Borrower.

Section 7.4. Conditions to Availability of Proceeds for Restoration. Notwithstanding Section 7.3, after a Casualty or a Condemnation (a "**Destruction Event**"), Lender will make the Proceeds (less any costs incurred by Lender in collecting the Proceeds) available for Restoration in accordance with the conditions for disbursements set forth in Section 7.5, provided that the following conditions are met:

- (i) Fashion Outlets of Chicago LLC or the transferee under a Permitted Transfer, if any, continues to be the Borrower at the time of the Destruction Event and at all times thereafter until the Proceeds have been fully disbursed;

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(ii) no default under the Loan Documents exists at the time of the Destruction Event and no Event of Default has occurred two (2) or more times during the twelve (12) month period prior to the Destruction Event;

(iii) all Leases with respect to seventy-five percent (75%) of the space leased at the time of the Destruction Event and all Property Documents which are necessary for the continued operation of the Property as a first class shopping center in effect immediately prior to the Destruction Event continue in full force and effect notwithstanding the Destruction Event, except as otherwise approved by Lender;

(iv) if the Destruction Event is a Condemnation, Borrower delivers to Lender evidence reasonably satisfactory to Lender that the Improvements can be restored to an economically and architecturally viable unit;

(v) Borrower delivers to Lender evidence reasonably satisfactory to Lender that the Proceeds are sufficient to complete Restoration or if the Proceeds are insufficient to complete Restoration, Borrower first deposits with Lender funds ("**Additional Funds**") that when added to the Proceeds will be sufficient to complete Restoration or in lieu of a cash deposit, deliver a letter of credit to Lender in the same amount or cause a guarantor acceptable to Lender to execute a completion guaranty acceptable to Lender with respect to such amount and the related construction;

(vi) if the Destruction Event is a Casualty, Borrower certifies to Lender that the Insurer under each affected Policy has not denied liability under the Policy as to Borrower or the insured under the Policy;

(vii) Lender is satisfied that the proceeds of any rent loss insurance in effect together with other available gross revenues from the Property are sufficient to pay Debt Service Payments after paying Operating Expenses and capital expenditures until Restoration is complete;

(viii) Lender is satisfied that Restoration will be completed on or before the date (the "**Restoration Completion Date**") that is the earliest of: (A) six (6) months prior to the Maturity Date; (B) the earliest date required for completion of Restoration under any Lease in excess of 15,000 square feet, the Expansion REA or any Property Document; or (C) any date required by Law; and

(ix) for the 12 month period immediately preceding the Destruction Event, the annual Debt Service Coverage was at least 1.15x, and at the time of the Destruction Event, is at least 1.15x, provided that, if the Net Operating Income does not provide such Debt Service Coverage, then Borrower expressly authorizes and directs Lender (at Lender's sole discretion) to apply an amount from the Proceeds to reduction of Principal (without any Prepayment Premium) in order to reduce the annual Debt Service Payments sufficiently for such Debt Service Coverage to be achieved. The reduced debt service payments will be calculated using the Fixed Interest Rate and an amortization schedule that will achieve the same proportionate amortization of the reduced Principal over the then-remaining Term as would have been achieved if the Principal and the originally scheduled Debt Service

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Payments had not been reduced. Borrower will execute any documentation that Lender deems reasonably necessary to evidence the reduced Principal and adjusted Debt Service Payments.

Section 7.5. Restoration.

(a) Notwithstanding the provisions of Section 7.3, if the total Proceeds for any Destruction Event do not exceed the Casualty Threshold or Condemnation Threshold, as applicable, or if Lender otherwise elects not to act on Borrower's behalf, Borrower may and shall, without the consent of Lender, promptly file and prosecute all claims with respect to such Destruction Event. If the total Proceeds for any Destruction Event are equal to or less than the Casualty Threshold or Condemnation Threshold, as applicable, and no Event of Default is continuing, Lender will disburse to Borrower the entire amount of any Proceeds received by Lender, and Borrower will commence Restoration promptly after the Destruction Event and complete Restoration not later than the Restoration Completion Date.

(b) If the Proceeds for any Destruction Event exceed the Casualty Threshold or Condemnation Threshold, as applicable, and Lender elects or is obligated by Law or required under this Article VII to make the Proceeds available for Restoration, Lender will disburse the Proceeds and any Additional Funds deposited hereunder (the "Restoration Funds") for purposes of the Restoration, upon Borrower's request as Restoration progresses, generally in accordance with normal construction lending practices for disbursing funds for construction costs, provided that the following conditions are met in connection with each such request:

(i) Borrower commences Restoration promptly after the Destruction Event and completes Restoration on or before the Restoration Completion Date;

(ii) if Lender requests, Borrower delivers to Lender prior to commencing Restoration, for Lender's approval, plans and specifications and a detailed budget for the Restoration;

(iii) Borrower delivers to Lender satisfactory evidence of the costs of Restoration incurred prior to the date of the request, and such other documents as Lender may request including mechanics' lien waivers and title insurance endorsements;

(iv) Borrower pays all costs of Restoration whether or not the Restoration Funds are sufficient and, if at any time during Restoration, Lender determines that the undisbursed balance of the Restoration Funds is insufficient to complete Restoration, Borrower deposits with Lender, as part of the Restoration Funds, an amount equal to the deficiency within 30 days of receiving notice of the deficiency from Lender (or in lieu of a cash deposit, delivers a letter of credit to Lender in the same amount, or causes a guarantor acceptable to Lender to execute a completion guaranty acceptable to Lender with respect to such amount and the related construction); and

(v) there is no Potential Monetary Default or Event of Default under the Loan Documents at the time Borrower requests funds or at the time Lender disburses funds other than defaults which, by using the Proceeds for their intended purposes, are cured.

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(c) If an Event of Default occurs at any time after the Destruction Event, then Lender will have no further obligation to make any remaining Proceeds available for Restoration and may apply any remaining Proceeds as a credit against any portion of the Debt selected by Lender in its sole discretion.

(d) Lender may elect at any time prior to commencement of Restoration or while work is in progress to retain, at Borrower's expense, an independent engineer or other consultant to review the plans and specifications, to inspect the Restoration as it progresses and to provide reports. If any matter included in a report by the engineer or consultant is unsatisfactory to Lender, Lender may suspend disbursement of the Restoration Funds until the unsatisfactory matters contained in the report are resolved to Lender's satisfaction.

(e) If Borrower fails to commence and complete Restoration in accordance with the terms of this Article VI and fails to cure the same within five (5) Business Days after notice, then in addition to the Remedies, Lender may elect to restore the Improvements on Borrower's behalf and reimburse itself out of the Restoration Funds for costs and expenses incurred by Lender in restoring the Improvements, or Lender may apply the Restoration Funds as a credit against any portion of the Debt selected by Lender in its sole discretion.

(f) Lender will deposit the Restoration Funds in an account with a third-party depository reasonably acceptable to Lender and to Borrower (the "Restoration Account"). Disbursements from such account will be in accordance with this Article VII. Lender will not hold any Restoration Funds in trust. Lender may commingle the deposits in the Restoration Account with other funds of Lender. Lender shall pay interest on the deposits to the Restoration Account at the monthly money market rate quoted by the "Bank Rate Monitor" national index as determined by Lender. Lender may use another rate quoted by the Bank Rate Monitor, instead of such money market rate or another comparable national index in the event Lender determines such other rate or index is more appropriate under the circumstances. Additionally, in the event the Bank Rate Monitor national index is no longer published, then Lender may select another comparable index. Borrower acknowledges and agrees that all risk of loss with respect to the principal amount of such deposits shall be at the sole risk of Borrower.

(g) Borrower will pay all of Lender's reasonable expenses incurred in connection with a Destruction Event or Restoration. If Borrower fails to do so, then in addition to the Remedies, Lender may from time to time reimburse itself out of the Restoration Funds.

(h) If any excess Proceeds remain after Restoration, Lender shall deliver the excess to Borrower as long as there is no Potential Monetary Default or Event of Default under the Loan Documents, in which event, Lender may apply the excess as a credit against any portion of the Debt, as selected by Lender.

(i) Provided there is no Potential Monetary Default or Event of Default, all business interruption or rent loss insurance shall be made available to Borrower for use in the operation of the Property.

(j) Notwithstanding anything to the contrary herein, if any Lease with a tenant occupying 15,000 square feet or more, the Ground Lease or any Property Document, or any agreement with any

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governmental authority, requires the Borrower to restore the Property after a Destruction Event, or to make Proceeds available for such purpose to any other Person or entity, Lender shall disburse the same to Borrower provided (i) the applicable Destruction Event occurs no later than six (6) months prior to the Maturity Date, (ii) there is no Potential Monetary Default or Event of Default under the Loan Documents, and (iii) the conditions described in Section 7.4(v) and Section 7.4(vii) are met.

ARTICLE VIII

COMPLIANCE WITH LAW AND AGREEMENTS

Borrower hereby confirms that, as of the date hereof, the representations and warranties contained in this Article VIII are true, correct and complete, subject to the exceptions set forth in the Side Letter, and covenants that until the Debt has been repaid in full, it shall take the actions or refrain from taking the actions as required by this Article VIII and shall cause any representations and warranties that are expressly prospective in nature to be true, correct and complete on every day that the Debt is outstanding:

Section 8.1. Compliance with Law. Borrower, the Property and the use of the Property comply and will continue to comply with Law and with all agreements and conditions, in each case, as is necessary to preserve and extend all rights, licenses, permits, privileges, franchises and concessions (including zoning variances, special exceptions and non-conforming uses) relating to the Property or Borrower. Borrower will notify Lender of the commencement of any investigation or Proceeding relating to a possible violation of Law promptly after Borrower receives notice thereof and will deliver promptly to Lender copies of all material documents Borrower receives or delivers in connection with the investigation or Proceeding.

Section 8.2. Compliance with Agreements. There are no defaults, events of defaults or events which, with the passage of time or the giving of notice or both, would constitute an event of default by Borrower or, to Borrower's knowledge any other party, under the Property Documents. Borrower will pay and perform all of its obligations under the Expansion REA and the Property Documents as and when required by the Expansion REA and the Property Documents, to the extent the failure to do so would reasonably be expected to cause a material adverse effect on Borrower or the Property. Borrower will exercise commercially reasonable efforts to cause all other parties to the Property Documents and the Expansion REA to pay and perform their obligations under the Property Documents and the Expansion REA as and when required by the Property Documents or the Expansion REA, as applicable. Borrower will not (a) amend or waive any provision of the Property Documents or the Expansion REA, (b) exercise any option under the Property Documents or the Expansion REA, (c) give any approval required or permitted under the Property Documents or the Expansion REA that would, in each case of (a) through (c), materially adversely affect the Property or Lender's rights and interests under the Loan Documents, (d) cancel or surrender any of the Property Documents or the Expansion REA, other than in accordance with the Loan Documents, or (e) release or discharge or permit the release or discharge of any party to or entity bound by any of the Property Documents or the Expansion REA from any material obligations, without, in each instance, Lender's prior approval (not to be unreasonably withheld) (excepting therefrom, in all instances, all service contracts or other agreements entered into in the normal course of business that are cancelable upon not more than 60 days' notice). Borrower promptly will deliver to Lender copies of any notices of default or of termination that Borrower receives or

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delivers relating to any Property Document or the Expansion REA. Borrower shall not acquire any fee interest in the Easement Land (by exercise of the purchase option granted to Borrower in the Easement Agreement or otherwise) without the prior written consent of Lender. If Borrower acquires the fee title, or any other estate, title or interest in any of the Easement Land (and/or in any other portion of the Property demised under the Easement Agreement), this Security Instrument immediately and automatically, without the need for any additional mortgage, assignment, pledge or conveyance to Lender, will encumber the newly acquired interest as a first lien with the same force and effect as though specifically deeded, mortgaged, assigned, pledged or conveyed in this Security Instrument. However, Borrower will deliver to Lender, at Lender's request, documents reasonably satisfactory to Lender evidencing Lender's first lien.

Section 8.3. ERISA Compliance.

(a) Borrower is not and will not be an "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 ("**ERISA**") that is subject to Title I of ERISA or a "plan" as defined in Section 4975(e)(1) of the Code that is subject to Section 4975 of the Code, and Borrower's assets do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA or Section 4975 of the Code.

(b) Borrower is not and will continue not to be a "governmental plan" within the meaning of Section 3(32) of ERISA and transactions by or with Borrower are not and will not be subject to any Laws regulating investments of and fiduciary obligations with respect to governmental plans.

(c) Borrower will not engage in any transaction which would cause any obligation or any action under the Loan Documents, including Lender's exercise of the Remedies, to be a non-exempt prohibited transaction under ERISA.

Section 8.4. Anti-Terrorism.

(a) None of Borrower, any General Partner, Guarantor or any of their respective Affiliates is in violation of any of the Anti-Terrorism Laws, including Executive Order No. 13224 on Terrorist Financing (effective September 24, 2001) (the "**Executive Order**"), the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56), and the Bank Secrecy Act, 31 U.S.C. §5311 et seq. Borrower covenants that none of any General Partner, Guarantor or any of its respective Affiliates will at any time during the term of the Loan be in violation of any of the Anti-Terrorism Laws. The foregoing representation regarding Affiliates excludes Excluded Persons.

(b) None of Borrower, any General Partner, Guarantor or any of their respective Affiliates is or will be a Prohibited Person or is or will be in violation of any of the Laws relating to Prohibited Persons. A "**Prohibited Person**" is (A) a person designated as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website or at any replacement website or other replacement official publication of such list, or any person or entity owned or controlled by or acting for or on behalf of such a person; (B) an agency of the government of a country, or an organization controlled by a country, or a person resident in a country that is subject to trade restrictions or a sanctions program under any of the economic sanctions of the United States administered by the

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United States Department of the Treasury's Office of Foreign Assets Control; or (C) a person or entity (including a country or government) with whom Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Laws. Borrower and its Affiliates will at all times comply with all Laws relating to Prohibited Persons. The foregoing representation regarding Affiliates excludes Excluded Persons.

(c) The term "**Affiliate**" is defined as any Person that, directly or indirectly, controls, is under common control with, or is controlled by Borrower. For purposes of this Section 8.4, the term "**control**" (and derivative terms) is defined as the power to direct or cause the direction of the management and policies of the applicable entity through ownership of voting securities or beneficial interests, by contract or otherwise, and persons or entities having control include any general partner, managing member, manager or executive officer of the applicable entity, and any direct or indirect holder of a twenty percent (20%) or greater ownership interest in Borrower, any General Partner, Guarantor, Indemnitor or such applicable entity.

(d) The Loan proceeds will not be used for any illegal purposes and no portion of the Property or interests in Borrower have been acquired with funds derived from illegal activities.

(e) Borrower covenants and agrees to deliver to Lender any certification or other evidence reasonably requested from time to time by Lender in its sole discretion, confirming Borrower's compliance with this Section 8.4. The representations and warranties set forth in this Section 8.4 shall be deemed repeated and reaffirmed by Borrower as of each date that Borrower makes any payment to Lender under the Loan Documents or receives any payment from Lender.

Section 8.5. Section 6045(e) Filing. Borrower hereby represents and warrants that the Loan is a financing of the Property and that no brokers were involved in this Loan. Borrower covenants and agrees that, as between Borrower and Lender, Lender shall have no reporting obligations under Section 6045(e) of the Code.

ARTICLE IX

ENVIRONMENTAL

Section 9.1. Environmental Representations and Warranties.

Except as disclosed in the Environmental Report and to Borrower's knowledge as of the date of this Security Instrument:

(i) no Environmental Activity has occurred, is occurring or is suspected or threatened to occur on the Property other than the use, storage, and disposal of Hazardous Materials which (A) is in the ordinary course of business consistent with the Permitted Use; (B) is in compliance with all Environmental Laws and (C) has not resulted in Material Environmental Contamination of the Property; and

(ii) no Environmental Activity has occurred, is occurring or is suspected or threatened on any property in the vicinity of the Property which has resulted in Material Environmental Contamination of the Property.

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Section 9.2. Environmental Covenants.

- (a) Borrower will not cause or permit any Material Environmental Contamination of the Property.
- (b) No Environmental Activity will occur on the Property other than the use, storage and disposal of Hazardous Materials which (A) is in the ordinary course of business consistent with the Permitted Use; (B) is in compliance with all Environmental Laws; and (C) does not create a risk of Material Environmental Contamination of the Property.
- (c) Borrower will notify Lender promptly upon Borrower becoming aware of (i) any Material Environmental Contamination of the Property or (ii) any Environmental Activity, or suspicion or threat thereof, with respect to the Property that is not in accordance with the preceding subsection (b). Borrower promptly will deliver to Lender copies of all documents delivered to or received by Borrower regarding the matters set forth in this subsection (c), including notices of Proceedings or investigations concerning any Material Environmental Contamination of the Property or Environmental Activity (or suspicion or threat thereof) or concerning Borrower's status as a potentially responsible party (as defined in the Environmental Laws). Borrower's notification of Lender in accordance with the provisions of this subsection (c) will not be deemed to excuse any default under the Loan Documents resulting from the violation of Environmental Laws or the Material Environmental Contamination of the Property or Environmental Activity that is the subject of the notice. If Borrower receives notice of a suspected violation of Environmental Laws in the vicinity of the Property that poses a risk of Material Environmental Contamination of the Property, Borrower will give Lender notice and copies of any documents received relating to such suspected violation.
- (d) From time to time at Lender's request, Borrower will deliver to Lender any information known and documents available to Borrower relating to the environmental condition of the Property.
- (e) Lender may perform and/or engage an independent consultant to perform an assessment of the environmental condition of the Property and of Borrower's compliance with this Section 9.2 at any time for reasonable cause, or during an Event of Default. In connection with any such assessment: (i) Lender and/or consultant may enter and inspect the Property and perform tests of the air, soil, ground water and building materials; (ii) Borrower will cooperate and use best efforts to cause tenants and other occupants of the Property to cooperate with Lender and/or consultant; (iii) Borrower will receive a copy of any final report prepared after the assessment, to be delivered to Borrower not more than 10 days after Borrower requests a copy and executes Lender's standard confidentiality and waiver of liability letter; (iv) Borrower will accept custody of and arrange for lawful disposal of any Hazardous Materials required to be disposed of as a result of the tests; (v) Lender will not have liability to Borrower with respect to the results of the assessment; and (vi) Lender will not be responsible for any damage to the Property resulting from the tests described in this subsection (e) and Borrower will look solely to the consultants to reimburse Borrower for any such damage. The consultant's assessment and reports will be at Borrower's expense (A) if the reports disclose any material adverse change in the environmental condition of the Property from that disclosed in the Environmental Report; (B) if Lender engaged the consultant when Lender had reasonable cause to believe Borrower was not in compliance with the terms of this Article IX and,

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after written notice from Lender, Borrower failed to provide promptly reasonable evidence that Borrower is in compliance; or (C) if Lender engaged the consultant during an Event of Default.

(f) If Lender has reasonable cause to believe that there is Environmental Activity at the Property, Lender may elect in its sole discretion to release from the lien of this Security Instrument any portion of the Property affected by the Environmental Activity and Borrower will accept the release.

(g) Borrower shall implement and comply with the terms the terms of the O&M Plan and comply in all material respects with the provisions of any such future operations, abatement and maintenance plan for asbestos, lead-based paint or mold at the Property (a "**Future O&M Plan**"), it being understood and agreed that compliance with the O&M Plan and any Future O&M Plan shall require or be deemed to require, without limitation, the proper preparation and maintenance of all records, papers and forms required under the Environmental Laws.

ARTICLE X

FINANCIAL REPORTING

Section 10.1. Financial Reporting.

(a) Borrower will deliver to Lender within 90 days after the close of each Fiscal Year (together with any change to the previously submitted Budget and Leasing Plan in accordance with Section 10.3), an annual financial statement (the "**Annual Financial Statement**") for the Property for the prior Fiscal Year, which will include a comparative balance sheet, an income and expense statement on an accrual basis, including operating and capital expenditures and leasing costs, and if requested, all supporting schedules. The Annual Financial Statement will be:

(i) certified by Borrower (or, if audited financials are prepared and available, audited by a CPA) prior to any Event of Default and during any Event of Default audited by a CPA and accompanied by an opinion of the CPA that, in all material respects, the Annual Financial Statement fairly presents the financial position of the Property; and

(ii) separate and distinct from any consolidated statement or report for Borrower or any other entity or any other property.

(b) Simultaneously with the delivery of the Annual Financial Statement, Borrower will deliver to Lender the Certification of Rent Roll (as required by, and defined in, the Assignment).

(c) Borrower will keep full and accurate Financial Books and Records for each Fiscal Year. Borrower will permit Lender or Lender's accountants or auditors to inspect or audit the Financial Books and Records from time to time and upon reasonable advance notice (provided no advance notice shall be required during the existence of an Event of Default). Borrower will maintain the Financial Books and Records for each Fiscal Year for not less than 3 years after the date Borrower delivers to Lender the Annual Financial Statement and the other financial certificates, statements and information to be delivered to Lender for the Fiscal Year. Financial Books and Records will be maintained at Borrower's address set forth in Section 17.1 or at any other location as may be approved by Lender. The costs of any inspection by Lender of the Financial Books and

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Records shall be borne by Lender unless (i) an Event of Default exists or (ii) Lender's accountants or auditors determine that there exists a material discrepancy from the information otherwise provided to Lender pursuant to this Article X.

Section 10.2. Interim Financial Information, Lease Information and Rent Roll.

(a) Borrower will deliver to Lender within 45 days after the end of each quarter (i) accrual basis income and expense statements for the Property for the immediately preceding fiscal quarter, as well as for the year-to-date, (ii) a current Rent Roll for the Property, (iii) a quarterly tenant sales report with respect to the Property, it being understood and agreed that each item required to be delivered pursuant to this subsection (a) shall be accompanied by a certification from Borrower confirming that the information so delivered is true, correct and complete in all material respects;

(b) Upon Lender's request, simultaneously with the delivery of the quarterly financial information required under subsection (a) above, Borrower will deliver to Lender a certificate disclosing any contracts with affiliates of Borrower in connection with the Property;

(c) Borrower will deliver, or cause to be delivered, all information required pursuant to (i) Section 4.11 of each Guaranty, and (ii) Section 6.1 of the Assignment;

(d) Borrower will deliver to Lender any other information with respect to Borrower, Guarantor and/or the operation and management of Borrower and Property as Lender may reasonably request from time to time within 15 days of the request; and

(e) Borrower will deliver to Lender within 45 days after the end of each quarter (i) a summary of all pending requests for reductions in rent payable received by Borrower from tenants, which requests are being considered by Borrower for a potential Lease amendment, (ii) a summary of all Lease amendments resulting in a reduction of rent payable during the immediately preceding quarter and (iii) if the Expansion Connection Work has been commenced, a status update on the progress of the Expansion Connection Work, including a projected completion date for the Expansion Connection Work.

Section 10.3. Annual Budget; Leasing Plan. Not less than 30 days prior to the end of each Fiscal Year, Borrower will deliver to Lender the following, for informational purposes only (unless delivered while an Event of Default exists and except to the extent covering a period of time while an Event of Default exists):

(a) A detailed comparative budget (the "**Budget**") for the Property for the then current and succeeding Fiscal Year showing anticipated Rents and Operating Expenses, including projected capital and tenant improvement costs, and any other information Lender requests; and

(b) Upon Lender's request, a lease rollover schedule for the subsequent two Fiscal Years, a marketing plan (if applicable), and a leasing plan (collectively, the "**Leasing Plan**") for the Property, which shall include any information Borrower or the property manager may have for any vacant or rollover space, leasing commissions, tenant improvement costs and other capital costs in the Property.

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Borrower waives any defense or right of offset to the Obligations, and any claim or counterclaim against Lender, arising out of any discussions between Borrower and Lender regarding any Budget or revised Budget delivered to Lender, including any defense, right of offset, claim or counterclaim alleging in substance, that by virtue of such delivery, discussions or resolution, Lender has interfered with, influenced or controlled Borrower or the operations at the Property.

Section 10.4. Material Non-Public Information. Prior to delivering any information that may constitute material non-public information with respect to a company whose shares are publicly traded, Borrower shall endeavor to notify Lender in advance of any such proposed delivery, it being understood and agreed, however, that any breach of this provision by Borrower shall not constitute a default or Event of Default hereunder.

ARTICLE XI

EXPENSES AND DUTY TO DEFEND

Section 11.1. Payment of Expenses.

(a) Unless otherwise provided to the contrary in the Loan Documents, Borrower is obligated to pay all actual, out-of-pocket fees and expenses (the "**Expenses**") that are (i) incurred by Lender in respect of the Loan, any Loan Document, the Property or Borrower; (ii) charged by Lender in consideration of processing any request by or on behalf of Borrower for an action or consent of Lender under the Loan Documents, which charges will be determined by Lender in its reasonable discretion; or (iii) are otherwise payable in connection with the Loan, the Property or Borrower, including attorneys' fees and expenses and any fees and expenses relating to (A) the preparation, execution, acknowledgment, delivery and recording or filing of the Loan Documents; (B) any Proceeding or other claim asserted against Lender or any Proceeding described in Section 5.10; (C) any inspection, assessment, survey and test permitted under the Loan Documents; (D) any Destruction Event; (E) the preservation of Lender's security and the exercise of any rights or remedies available at Law, in equity or otherwise; (F) administration of the Loan; (G) the Leases, the Expansion REA and the Property Documents; and (H) any Proceeding in or for bankruptcy, insolvency, reorganization or other debtor relief or similar Proceeding relating to Borrower, the Property or any person liable under any guarantee, indemnity or other credit enhancement delivered in connection with the Loan.

(b) Borrower will pay, within ten (10) days of Lender's demand, the Expenses immediately on demand, together with any applicable interest, premiums or penalties. If Lender pays any of the Expenses, Borrower will reimburse Lender the amount paid by Lender within ten (10) days of Lender's demand, together with interest on such amount at the same per annum rate of interest then accruing on the Principal, from the date Lender paid the Expenses through and including the date Borrower reimburses Lender. The Expenses together with any applicable interest, premiums or penalties constitute a portion of the Debt secured by this Security Instrument and the other Loan Documents.

Section 11.2. Duty to Defend. If Lender, MetLife Investment Advisors, LLC or any of Lender's trustees, officers, participants, employees or affiliates is a party in any Proceeding relating to the Property, Borrower or the Loan, Borrower will indemnify and hold harmless the party and

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will defend the party with attorneys and other professionals retained by Borrower and approved by Lender. Lender may elect to engage its own attorneys and other professionals, at Borrower's expense, to defend or to assist in the defense of the party. In all events, case strategy will be determined by Lender if Lender so elects and no Proceeding will be settled without Lender's prior approval which may be withheld in its sole discretion.

ARTICLE XII

TRANSFERS, LIENS AND ENCUMBRANCES

Section 12.1. Prohibitions on Transfers, Liens and Encumbrances.

(a) Borrower acknowledges that in making the Loan, Lender is relying to a material extent on the business expertise and net worth of Borrower and Borrower's general partners, members or principals and on the continuing interest that each of them has, directly or indirectly, in the Property. Accordingly, except as specifically set forth in this Security Instrument, Borrower (i) will not, and will not permit its partners, members or principals to, effect a Transfer without Lender's prior approval, which may be withheld in Lender's sole discretion and (ii) will keep the Property free from all liens and encumbrances other than the lien of this Security Instrument, the Permitted Exceptions and any Equipment Leases. A "**Transfer**" is defined as any sale, grant, lease (other than bona fide third-party space leases with tenants), conveyance, assignment or other transfer of, or any encumbrance or pledge against, the Property, any interest in the Property, any interest of Borrower's partners, members or principals in the Property, or any change in Borrower's composition, in each instance whether voluntary or involuntary, direct or indirect, by operation of law or otherwise (including mergers or divisions affecting any constituent entity) and including the grant of an option or the execution of an agreement (other than an unrecorded purchase and sale agreement, the effectiveness of which is conditioned on Borrower obtaining Lender's approval in accordance with the requirements hereof with respect to the transaction contemplated thereby) relating to any of the foregoing matters.

(b) Promptly after the occurrence of any Permitted Transfer or other Transfer permitted in accordance with Section 12.2 pursuant to which an entity which did not own at least twenty percent (20%) of the direct or indirect ownership interests in Borrower prior to such Transfer is to acquire ownership of direct or indirect ownership interests in Borrower such that, following such Transfer, such entity will own twenty percent (20%) or more of the direct or indirect interests in Borrower (other than with respect to the sale of ownership interests in any Person on a recognized public exchange), Borrower shall deliver to Lender an updated organizational structure chart reflecting the post-Transfer structure of Borrower.

Section 12.2. Permitted Transfers.

(a) Upon compliance with the specified conditions set forth in this Article XII, the following Transfers (the "**Permitted Transfers**") may occur without Lender's prior consent:

(i) Publicly Traded Shares. Transfers of publicly traded shares in any Person, provided at all times (A) such shares are listed on the New York Stock Exchange or another recognized national or international stock exchange, and (B) the proposed

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Transfer does not constitute a disposition, in a single Transfer or series of related Transfers, of all or substantially all of the shares in such Person and does not constitute a merger of such Person with one or more other entities, except as specifically permitted pursuant to Section 12.2(a)(iii).

(ii) Limited Partner Interests in Macerich. Transfers of limited partnership units in Macerich (or its successor by means of any Permitted Transfer, other than a Loan Assumption), provided at all times (A) MAC (or its successor by means of any other Permitted Transfer, other than a Loan Assumption) remains the sole general partner of Macerich (or its successor by means of any Permitted Transfer, other than a Loan Assumption), (B) Borrower delivers to Lender, on a quarterly basis, notice of changes in the ownership interest of limited partners owning twenty percent (20%) or more in Macerich (or its successor by means of any Permitted Transfer, other than a Loan Assumption), (C) the Property is managed by a Qualified Manager, (D) the proposed Permitted Transfer will not result in a violation of any of the covenants or representations contained in Sections 8.3, 8.4, and 13.3 of this Security Instrument, and Borrower will deliver to Lender such documentation of compliance as Lender requests in its sole discretion, and (E) the proposed Transfer does not constitute a disposition, in a single Transfer or series of related Transfers, of all or substantially all of the limited partnership units in Macerich (or its successor by means of any Permitted Transfer, other than a Loan Assumption), except as specifically permitted pursuant to Section 12.2(a)(iii) below.

(iii) Corporate Transactions. Transfers effected by mergers, stock purchases, consolidations or other similar transactions relating to MAC, Macerich and/or any other publicly traded entity (or their successors by any Permitted Transfer, other than a Loan Assumption), provided (A) the surviving entity of such merger, consolidation or other similar transaction is a Qualified Real Estate Investor, (B) the general conditions described in clauses (iv)(A), (v) and (viii) of Section 12.2(b) are met, (C) Borrower delivers to Lender within five (5) Business Days following such Transfer a notice of change in the ownership interest owning twenty percent (20%) or more in the subject entity, and (D) the proposed Permitted Transfer will not result in a violation of any of the covenants or representations contained in Sections 8.3, 8.4, and 13.3 of this Security Instrument, and Borrower will deliver to Lender such documentation of compliance as Lender requests in its sole discretion.

(iv) Ordinary Course Easements. Transfers constituting easements, restrictions, covenants, reservations and rights of way upon and/or with respect to certain portions of the Property, in each case in the ordinary course of business, for traffic circulation, ingress, egress, parking, access, water and sewer lines, telephone and telegraph lines, electric lines, solar and/or fuel cell facilities, or other utilities or for other similar purposes and/or amendments to any agreement affecting the Property in regard to the same; provided, that no such transaction shall materially impair the utility and operation of the Property or materially adversely affect the value, use or operation of the Property. In connection with any Transfer permitted pursuant to this clause, Lender hereby agrees to execute and deliver any instrument reasonably necessary or appropriate to evidence its consent to said action and to subordinate its interest under this Security Instrument to any such easement, restriction, covenant, reservation or right of way upon reasonable request

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of the holder thereof, provided (A) no Event of Default then exists under the Loan Documents, (B) Lender receives (1) a copy of the instrument of Transfer (e.g., grant of easement), (2) a site plan or, at Lender's request, a survey identifying the location of the subject portion of the Property, (3) a legal description of the same, (4) if applicable, a revised legal description to the Security Instrument of the portion of the Property that will continue to have first priority, and, at Lender's request, an update to Lender's title policy evidencing such continued first priority; (5) an Officer's Certificate stating the requirements and conditions hereinabove have been satisfied, (C) such other reasonable requirements Lender may have with respect to the particular transfer shall be satisfied, and (D) Borrower shall have paid to Lender, within ten (10) days after Lender's demand, all reasonable expenses incurred by Lender in connection with any such Transfer.

(v) Direct Interests in Borrower. Transfers of direct ownership interests in Borrower, provided (A) subsequent to the Transfer, MAC and/or Macerich (or any successor entity to any of the foregoing by means of any Permitted Transfer, other than a Loan Assumption) (each a "**Key Principal**") retain Control of Borrower (which Control may be in the form of Joint Control with a Qualified Joint Control Party) (B) subsequent to the Transfer, one or more Key Principals continue to own, directly or indirectly, in the aggregate, not less than the Required Percentage of the economic interests in Borrower, (C) subsequent to the Transfer, either (I) a Key Principal shall Control (which Control may be in the form of Joint Control with a Qualified Joint Control Party) and own at least the Required Percentage of the direct or indirect interest in the Guarantor (or continues to be the Guarantor), or (II) a Qualified Replacement Guarantor or another substitute indemnitor, guarantor or surety, as the case may be, satisfactory to Lender in its sole discretion shall have delivered to Lender a substitute for each Guaranty and Environmental Indemnity delivered to Lender in connection with the Loan and, if applicable, substitute guaranties or surety instruments, in each case on substantially the same form as executed at closing, or otherwise satisfactory to Lender, and (D) all general conditions described in Section 12.2(b) are met.

(vi) Indirect Interests in Borrower. Transfers of indirect ownership interests in Borrower, provided (A) subsequent to the Transfer, one or more Key Principals retain Control of Borrower (which Control may be in the form of Joint Control with a Qualified Joint Control Party), (B) subsequent to the Transfer, one or more Key Principals continue to own, directly or indirectly, in the aggregate, not less than the Required Percentage of the economic interests in Borrower and (C) subsequent to the Transfer, either (I) a Key Principal shall Control (which Control may be in the form of Joint Control with a Qualified Joint Control Party) and own at least the Required Percentage of the direct or indirect interest in the Guarantor (or continues to be the Guarantor), or (II) a Qualified Replacement Guarantor or another substitute indemnitor, guarantor or surety, as the case may be, satisfactory to Lender in its sole discretion shall have delivered to Lender a substitute for each Guaranty and the Environmental Indemnity delivered to Lender in connection with the Loan and, if applicable, substitute guaranties or surety instruments, in each case on substantially the same form as executed at closing, or otherwise satisfactory to Lender, and (D) the general conditions described in clauses (iii)(A), (iv)(A) and (v) of Section 12.2(b) are met, (E) Borrower promptly delivers to Lender a notice of change in the ownership interest owning twenty percent (20%) or more in the Borrower, and (F) the

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proposed Permitted Transfer will not result in a violation of any of the covenants or representations contained in Sections 8.3, 8.4, and 13.3 of this Security Instrument, and Borrower will deliver to Lender such documentation of compliance as Lender requests in its sole discretion.

(vii) Loan Assumption. (1) Subject to subpart (2) of this clause (vii), a Transfer by a sale (a "Loan Assumption") of the Property (or 50% or more of the interests in Borrower pursuant to a Transfer that is not otherwise expressly permitted under this Section 12.2) to an unaffiliated bona fide purchaser, provided the following conditions are met:

(A) If the transferee is not an entity that is Controlled and at least 50% owned (directly or indirectly) by a Qualified Real Estate Investor, then Lender shall have approved the transferee in its sole and absolute discretion;

(B) The transferee shall have expressly assumed the obligations of Borrower under the Property Documents, the Master Lease, the Expansion REA and under the Loan Documents;

(C) Lender shall have received either (i) as long as Guarantor is in compliance with its obligations under the applicable Loan Documents, a reaffirmation of each Guaranty and the Environmental Indemnity delivered to Lender in connection with the Loan satisfactory to Lender and executed by Guarantor, or (ii) if Guarantor is not in compliance with its obligations under the applicable Loan Documents, or Guarantor will not hold an interest in, or Control, the transferee, a substitute for each Guaranty and the Environmental Indemnity delivered to Lender in connection with the Loan and, if applicable, substitute guaranties or surety instruments, in each case on substantially the same form as executed at closing, or otherwise satisfactory to Lender, executed by the Qualified Replacement Guarantor or another substitute indemnitor, guarantor or surety, as the case may be, satisfactory to Lender in its sole discretion;

(D) Lender shall have received evidence satisfactory to it that immediately prior to the Loan Assumption and at least twelve (12) months subsequent to the Loan Assumption, the Property supports a loan to value ratio no greater than fifty percent (50%) and a Debt Yield of not less than 10%, provided that Borrower may prepay the Principal of the Loan (subject to the applicable requirements of each Note, including, without limitation, payment of the applicable Prepayment Premium) or provide cash collateral or a letter of credit in an amount necessary to cause the foregoing requirements to be satisfied;

(E) If the transferee is acquiring more than 50% of the direct or indirect interests in the Property or the Borrower, then Borrower shall pay to Lender a fee equal to one-half percent (0.5%) of the outstanding Principal; and

(F) All general conditions described in Section 12.2(b) shall have been met.

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(2) Borrower may only undertake the subject sale described in the foregoing clause (1) one-time, and may not exercise this Loan Assumption right on any future occasion, absent Lender's consent (in its sole discretion).

(b) The following are the general conditions referenced in Section 12.2(a):

(i) Lender shall have received no less than thirty (30) days prior written notice of the proposed Permitted Transfer;

(ii) There shall exist no Potential Monetary Default or Event of Default under the Loan Documents when the proposed Permitted Transfer occurs, and all payment obligations of Borrower to Lender have been paid through the date of the Permitted Transfer;

(iii) Borrower shall pay (A) all of Lender's reasonable, out-of-pocket expenses relating to the Transfer, including Lender's attorneys' fees, and any applicable title insurance costs and (B) a processing fee (not to exceed \$20,000.00) relating to the Transfer if Lender is charging a processing fee in the normal course of business;

(iv) (A) The proposed Permitted Transfer shall not result in a violation of any of the covenants or representations contained in Sections 8.3, 8.4, and 13.3 of this Security Instrument, and Borrower will deliver to Lender such documentation of compliance as Lender requests in its sole discretion to confirm the same, and (B) any transfer whereby any entity which owned less than twenty percent (20%) of the direct or indirect interests in Borrower, or Guarantor prior to such transfer will own twenty percent (20%) or more of the direct or indirect ownership interests in Borrower, or Guarantor subsequent to such transfer, shall be subject to (x) Lender's customary KYC and OFAC approval process (it being agreed that MAC, Macerich, and those affiliates of such entities identified on the organizational chart attached to the Side Letter as owning twenty percent (20%) or more of the direct or indirect interests in Borrower and/or Guarantor) have been examined for KYC and OFAC purposes) and (y) Lender's review and approval (exercised in Lender's reasonable discretion) solely for the purpose of confirming that no such entity is recognized, cited or identified by any U.S. or foreign governmental authority to be sponsoring or harboring organizations which support terrorism, incite political unrest or are involved in drug or human trafficking.

(v) After giving effect to the Permitted Transfer, the Property shall be managed by a Qualified Manager;

(vi) As of the date Lender receives the above-described notice and upon consummation of the proposed Permitted Transfer, the transferee (A) shall have not had adversarial dealings with Lender within the five (5) years preceding the date of the proposed Permitted Transfer, (B) shall have not been found guilty of criminal charges, and (C) shall be free from bankruptcy. For purposes of clauses (A), (B) and (C) of this clause (vi), "transferee" includes the transferee's constituent entities at all levels (other than Excluded Persons). For purposes of clause (C) of this clause (vi), "transferee" includes the transferee's sponsor, but not any other constituent entities. For all conditions in this clause (vi), "Lender" includes Lender's subsidiaries.

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(vii) If requested by Lender in connection with the Transfer of direct interests in Borrower or in connection with a Loan Assumption, a Uniform Commercial Code search report shall have been delivered to Lender relating to (A) the transferee, (B) any predecessor entity that transferee merged with or into, and (C) any entity where transferee acquired substantially all of its assets, in each case reasonably satisfactory to Lender and indicating that Lender's security interest in such portion of the Property as is perfected by filing a financing statement is prior to all other security interests reflected in the report, and Lender shall have received such additional customary searches and documentation as shall be reasonably required by Lender in connection with such Transfer; and

(viii) Lender shall have received a certification from an entity satisfactory to Lender certifying to the compliance of all relevant conditions to such Permitted Transfer, together with evidence confirming the accuracy of such certification as may be requested by Lender in the exercise of its reasonable discretion.

(c) In connection with a Permitted Transfer, Borrower and any party which, directly or indirectly, owns an interest in Borrower, may amend, supplement or modify its organizational documents without Lender's prior consent provided the same does not violate Section 13.3 of this Security Instrument.

(d) Notwithstanding anything to the contrary herein, in connection with any Permitted Transfer which requires multiple steps (including by means of assignment, redemption, merger, division, or other conveyancing or reorganization method), in the event that Borrower anticipates that any conditions that must be satisfied after giving effect to any individual step of such Transfer may not be satisfied upon the completion of any such step but will be satisfied upon the completion of all steps, (i) prior to the first step of such Transfer, Borrower shall provide notice to Lender of such Transfer together with a description of each such step in the process of the subject Transfer and (ii) Lender will reasonably cooperate with Borrower in its efforts to consummate such Permitted Transfer provided that Lender has determined that its rights and remedies are not adversely impacted by any step in the process of the subject Transfer.

(e) Notwithstanding anything to the contrary herein, in connection with any Permitted Transfer which Borrower elects to effectuate by and through an exchange accommodator and/or exchange intermediary in relation to an Internal Revenue Code Section 1031 like-kind exchange (whether a forward or reverse exchange), Lender shall reasonably cooperate with Borrower in its efforts to consummate such Permitted Transfer provided that Lender has determined that its rights and remedies are not adversely impacted by any step in the process of the subject Transfer.

(f) If any provision herein refers to a specific Person, said reference shall be deemed to have been modified and replaced, without further action of the parties, with the name of any specific Person who, by means of either (i) a Permitted Transfer or (ii) a Transfer or other action permitted hereby, succeeds to the interests of such specifically named Person.

(g) With respect to a proposed Transfer where more than one Permitted Transfer applied, the Lender agrees that the provision which is more specifically applicable to the proposed Transfer shall control. For example, although public trading of shares in MAC could also constitute

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an indirect transfer, the Permitted Transfer pertaining to public trading of shares (Section 12.2(a)(i)) would control.

Section 12.3. Right to Contest Liens. Borrower, at its own expense, may contest the amount, validity or application, in whole or in part, of any mechanic's, materialmen's or environmental liens in which event Lender will refrain from exercising any of the Remedies, provided that the following conditions are met:

(i) If the amount being contested with respect to any individual lien or liens exceeds \$1,000,000.00, whether individually or in the aggregate, Borrower delivers to Lender notice of the proposed contest not more than 30 days after the lien is filed;

(ii) the contest is by a Proceeding promptly initiated and conducted in good faith and with due diligence;

(iii) there is no Event of Default other than the default arising from the filing of the lien;

(iv) the Proceeding suspends enforcement or collection of the lien, imposition of criminal or civil penalties and sale or forfeiture of the Property and Lender will not be subject to any civil suit;

(v) the Proceeding is permitted under and is conducted in accordance with the Leases, the Expansion REA and the Property Documents;

(vi) if the amount of any individual lien being contested exceeds \$3,000,000.00, the amount of all liens then being contested exceeds \$5,000,000.00 in the aggregate, or an Event of Default exists, Borrower sets aside, reserves or furnishes a bond or other security satisfactory to Lender, in either case in an amount sufficient to pay the claim giving rise to the lien, together with all interest and penalties, or Borrower pays the contested lien under protest; and

(vii) with respect to an environmental lien, Borrower is using best efforts to mitigate or prevent any deterioration of the Property resulting from the alleged violation of any Environmental Laws or the alleged Environmental Activity.

Section 12.4. Replacement of Guarantor. Provided no Event of Default shall then be continuing (unless such Event of Default would be cured upon the replacement of the Guarantor in accordance with this Section 12.4), Borrower shall be permitted to replace the then-existing Guarantor with either (i) a Qualified Replacement Guarantor, or (ii) another indemnitor, guarantor or surety satisfactory to Lender in its sole discretion ("**New Guarantor**"). The New Guarantor shall execute and deliver to Lender a substitute for each Guaranty and the Environmental Indemnity delivered to Lender in connection with the Loan and, if applicable, substitute guaranties or surety instruments (collectively, the "**Existing Guaranty Agreements**"), in each case, on substantially the same form as executed at closing, or otherwise satisfactory to Lender, whereby the New Guarantor agrees to be bound thereby with respect to events first arising from and after the date of execution thereof (collectively, the "**New Guaranty Agreements**"). Upon the execution and delivery by the New Guarantor of the New Guaranty Agreements, together with such additional documents,

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instruments and opinions as Lender may reasonably require in connection therewith, Lender shall release the then-existing Guarantor from any liabilities arising under the Existing Guaranty Agreements with respect to events first arising thereafter (provided that such Guarantor shall remain liable for events occurring prior thereto under the Existing Guaranty Agreements). Borrower shall be responsible for all reasonable costs and expenses (including reasonable legal fees) incurred in connection with the delivery of the New Guaranty Agreements and the replacement of the existing Guarantor with a New Guarantor.

ARTICLE XIII

ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 13.1. Further Assurances.

(a) Borrower will execute, acknowledge and deliver to Lender, or to any other Person that Lender designates, any additional or replacement documents and perform any additional actions that Lender determines are reasonably necessary to evidence, perfect or protect Lender's first lien on and prior security interest in the Property or to carry out the intent or facilitate the performance of the provisions of the Loan Documents, provided the same do not diminish Borrower's rights or increase the obligations of Borrower under the Loan Documents.

(b) Borrower appoints Lender as Borrower's attorney-in-fact to perform, at Lender's election, any actions and to execute and record any of the additional or replacement documents referred to in this Section, in each instance only at Lender's election and only to the extent Borrower has failed to comply with the terms of this Section 13.1 while an Event of Default exists, or otherwise within ten (10) Business Days of Lender's request.

Section 13.2. Estoppel Certificates.

(a) Within ten (10) Business Days of Lender's request, Borrower will deliver to Lender, or to any entity Lender designates, a certificate certifying (i) the original principal amount of the Note; (ii) the unpaid principal amount of the Note; (iii) the Fixed Interest Rate; (iv) the amount of the then current Debt Service Payments; (v) the Maturity Date; (vi) the date a Debt Service Payment was last made; (vii) that, except as may be disclosed in the statement, there are no defaults or events which, with the passage of time or the giving of notice, would constitute an Event of Default; and (viii) there are no known offsets or defenses against any portion of the Obligations except as may be disclosed in the statement. In connection with a Permitted Transfer, within ten (10) Business Days of Borrower's request, Lender will deliver to Borrower, or to any entity Borrower designates, a certificate certifying (i) the original principal amount of the Note; (ii) the unpaid principal amount of the Note; (iii) the Fixed Interest Rate; (iv) the amount of the then-current Debt Service Payments; (v) the Maturity Date; (vi) the date a Debt Service Payment was last made; and (vii) that, except as may be disclosed in the statement, Lender has not delivered a written notice of default to Borrower pursuant to the Loan Documents.

(b) If Lender requests (which request, so long as no Event of Default exists, shall not be made more often than annually, and in all cases shall not be made without reasonable cause), Borrower will promptly request and exercise commercially reasonable efforts to deliver to Lender or

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to any Person that Lender designates, a certificate from each party to any Property Document or the Expansion REA, certifying that the Property Document or the Expansion REA, as applicable, is in full force and effect with no defaults or events which, with the passage of time or the giving of notice, would constitute an event of default under the Property Document or the Expansion REA, as applicable, and that there are no defenses or offsets against the performance of its obligations under the Property Document or the Expansion REA, as applicable.

(c) If Lender requests (which request, so long as no Event of Default exists, shall not be made more often than annually, and in all cases shall not be made without reasonable cause), Borrower will promptly request and exercise commercially reasonable efforts to deliver Lender, or to any entity Lender designates, a certificate from each tenant under a Lease then affecting the Property, certifying to any facts regarding the Lease as Lender may require, including that the Lease is in full force and effect with no defaults or events which, with the passage of time or the giving of notice, would constitute an event of default under the Lease by any party, that the rent has not been paid more than one month in advance (other than security deposits and amounts subject to later reconciliation) and that the tenant claims no defense or offset against the performance of its obligations under the Lease.

Section 13.3. Special Purpose Entity Representations, Warranties and Covenants.

Borrower represents, warrants, covenants and agrees as follows: Borrower and any General Partner shall each be a single asset, single purpose entity ("**Special Purpose Entity**") which shall not: (i) (A) in the case of Borrower, engage in business other than owning, leasing and operating the Property and (B) in the case of General Partner, engage in business other than the ownership of Borrower; (ii) (A) in the case of Borrower, acquire or own a material asset other than the Property and incidental personal property, without limiting the foregoing, the Property shall be operated as a single property or project, generating substantially all of Borrower's gross income, it being the intent that the Property shall constitute "single asset real estate" for purposes of Section 362(d)(3) of the Bankruptcy Code; and (B) in the case of General Partner, acquire or own an asset other than the partnership interests in the Borrower; (iii) maintain assets in a way difficult to segregate and identify, or commingle its assets with the assets of any other person or entity; (iv) fail to hold itself out to the public as a legal entity separate from any other or fail to maintain capital sufficient thereof to the extent funds are available from the Property, it being understood that this shall not require Borrower to obtain additional capital or credit from its members, partners, or shareholders provided prior distributions of cash to any of the foregoing were not made in violation of the Loan Documents; (v) fail to conduct business solely in its name or fail to maintain records, accounts or bank accounts separate from any other person or entity; (vi) file or consent to a petition pursuant to applicable bankruptcy, insolvency, liquidation or reorganization statutes, or make an assignment for the benefit of creditors without the unanimous consent of its partners or members, as applicable; (vii) incur additional indebtedness except for (A) trade payables in the ordinary course of business of owning and operating the Property, provided that such indebtedness is paid within ninety (90) days of when incurred, (B) with respect to Borrower, obligations with respect to Leases, the Ground Lease and related brokerage commissions that could be construed as indebtedness (such as tenant allowances or charges to be reconciled at a later date in relation to the payment of percentage rent or common area charges), (C) obligations under any Property Documents and other Permitted Exceptions that could be construed as indebtedness (such as payments with respect to the reconciliation of charges for common area maintenance), (D) obligations under contracts with respect to the performance of work at the Property which could be construed as indebtedness (such

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as accrued amounts not yet due and payable), (E) obligations with respect to taxes and other charges which may have accrued but which are not yet delinquent and (F) personal property purchase money financing and leases associated with (i) Borrower's sustainability initiatives and/or (ii) property used in the ordinary course of operating and maintaining the Property, provided the same under this clause (ii) do not secure payments in excess of One Million Dollars (\$1,000,000.00) in any single year (collectively, "**Equipment Leases**"); (viii) dissolve, liquidate, consolidate, merge, divide or sell all or substantially all of its assets (except in accordance with a Transfer permitted hereby); (ix) modify, amend or revise its organizational documents in a way that would be inconsistent with the requirements of this Section 13.3; or (x) in the case of each General Partner, fail to have at least one (1) Independent Manager that will vote on material matters affecting the Borrower or such General Partner, as applicable, which matters shall include (a) any proposed insolvency or bankruptcy proceeding of Borrower or such General Partner, as applicable, (b) any dissolution or liquidation of Borrower or such General Partner, as applicable, and (c) any amendment or modification of any provision of Borrower's or such General Partner's, as applicable, organizational documents relating to company purpose or Borrower's or such General Partner's, as applicable, bankruptcy-remote status (each, a "**Material Action**"), provided that the affirmative vote or written consent of the Independent Manager shall be required for the Borrower or such General Partner, as applicable, to approve or take any Material Action. No termination or change of the Independent Manager shall be made without giving Lender at least 10 days' prior written notice, which notice shall include a copy of a resume for such proposed replacement Independent Manager that reflects that such individual meets the definition of Independent Manager contained herein; provided further, that Lender shall have the right to object to the appointment of said replacement Independent Manager if he/she does not satisfy the definitional standards for Independent Manager below, and in the event of such objection, the proposed replacement Director shall not be admitted. Notwithstanding the foregoing, any current Independent Manager that receives notice of the termination of its duties as such Independent Manager shall provide a copy of said notice to Lender within 5 days of receipt thereof, provided however, such Independent Manager shall not incur any liability for failure to do so. In addition, each General Partner's organizational documents shall require that the Independent Manager consider the interests of creditors in the enforcement of their contractual rights, including, without limitation, all remedies, regardless of the solvency of the Borrower or such General Partner, as applicable.

Borrower agrees to keep the Special Purpose Entity covenants set forth in this Section 13.3 and such covenants currently are and will continue to be defined within Borrower's and each General Partner's organizational documents.

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Section 13.4. Escrows. Upon the occurrence of an Event of Default and until the cure of such Event of Default by Borrower (which cure Lender shall be under no obligation to accept), Lender shall have the option of requiring escrows for Taxes, insurance premiums and capital improvements; provided, however, that after the occurrence of a third Event of Default over the term of this Loan, Lender shall have the right to require such escrows notwithstanding the absence of a continuing Event of Default. In the event Lender exercises the right described in this Section, Borrower shall reasonably cooperate with Lender (including executing such documents and instruments as Lender may reasonably require) to establish such escrow and to create and perfect Lender's security interest therein.

ARTICLE XIV

DEFAULTS AND REMEDIES

Section 14.1. Events of Default. The term "Event of Default" means the occurrence of any of the following events:

(i) if Borrower fails to pay any amount due, as and when required, under any Loan Document and the failure continues for a period of 5 days;

(ii) if Borrower makes a general assignment for the benefit of creditors or generally is not paying, its debts as they become due; or if Borrower or General Partner or any other party commences any Proceeding (A) relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, in each instance with respect to Borrower; (B) seeking to have an order for relief entered with respect to Borrower; (C) seeking attachment, distraint or execution of a judgment with respect to Borrower; (D) seeking to adjudicate Borrower as bankrupt or insolvent; (E) seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to Borrower or Borrower's debts; or (F) seeking appointment of a Receiver, trustee, custodian, conservator or other similar official for Borrower or for all or any substantial part of Borrower's assets, provided that if the Proceeding is commenced by a party other than Borrower or General Partner or any of Borrower's general partners or members, Borrower will have 120 days to have the Proceeding dismissed or discharged before an Event of Default occurs;

(iii) an involuntary bankruptcy or insolvency proceeding of Borrower or any General Partner in which Borrower or General Partner, or any of its principals, officers, general partners or members, or its related Guarantor colludes with creditors in such bankruptcy or insolvency proceeding if such proceeding is not dismissed in accordance with the terms of this Security Instrument, provided that if the Proceeding is commenced by a party other than Borrower, General Partner or any of its respective Affiliates, Borrower will have 120 days to have the Proceeding dismissed or discharged before an Event of Default occurs;

(iv) if Borrower is in default beyond any applicable grace and cure period under any other mortgage, deed of trust, deed to secure debt or other security agreement encumbering the Property, other than Equipment Leases, whether junior or senior to the lien

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of this Security Instrument, provided that the foregoing shall not be deemed to permit any such encumbrances to be placed on the Property;

(v) if there is a default beyond any applicable grace and cure period under any indemnity or guaranty in favor of Lender delivered to Lender in connection with the Loan, including, without limitation, the Environmental Indemnity, or in connection with any loan cross-collateralized with the Loan;

(vi) if a Transfer occurs except in accordance with the provisions of this Security Instrument, unless Lender has given its prior written consent thereto (which consent may be granted or withheld in its sole and absolute discretion); provided however, a Transfer undertaken by Borrower or any other Person which, solely but-for the provision of any required notice or documentation to Lender, or other Person as required hereby, would otherwise be permitted pursuant to Section 12.2, shall not constitute a default, provided that the provision of such notice or documentation is provided to Lender within 30 days after notice by Lender to Borrower;

(vii) if Borrower abandons the Property or ceases to conduct its business at the Property;

(viii) if there is a default in the performance of any other provision of any Loan Document or the Environmental Indemnity or if there is any inaccuracy or falsehood in any material respect in any representation or warranty contained in any Loan Document, the Environmental Indemnity or any indemnity or guaranty in favor of Lender delivered to Lender in connection with the Loan or in connection with any loan cross-collateralized with the Loan, other than the Equipment Leases, which is not remedied within 30 days after Borrower receives notice thereof, provided that if no default, inaccuracy or falsehood is of a nature that it cannot be cured within the 30-day period and during that period Borrower commences to cure, and thereafter diligently continues to cure, the default, inaccuracy or falsehood, then the 30-day period will be extended for a reasonable period not to exceed 120 days after the notice to Borrower;

(ix) if Borrower violates any covenant contained within Section 13.3; provided, however, that with respect to a violation of Section 13.3(vii) (regarding additional indebtedness), unless the violation relates to the voluntary incurrence of additional debt for borrowed money (including, without limitation, any second mortgage or deed of trust placed on the Property for any reason), such violation shall not constitute an Event of Default to the extent it is cured within ten (10) Business Days after notice from Lender;

(x) if (a) Borrower knowingly suffers or permits or is grossly negligent in suffering or permitting the Property, or any part of the Property, to be used in a manner that is reasonably likely to (1) impair Borrower's title to the Property, (2) create rights of adverse use or possession, or (3) constitute an implied dedication of any part of the Property and (b) in each case, the actions listed in the forgoing clause (a) do not constitute a Permitted Exception, Permitted Transfer or are otherwise not permitted pursuant to the terms of this Security Instrument and such portion of the Property affected by the actions listed in the forgoing clause (a) is material to the operation of the Property, affects access to the

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Property, materially affects the number of parking spaces at the Property or otherwise results in or is reasonably likely to result in a material and adverse effect on the Borrower, the Loan or the Property;

(xi) if Borrower acquires the fee interest in the Ground Lease Land without first subjecting such interest to the lien of this Security Instrument; or

(xii) if (A) Borrower is in monetary default or material non-monetary default beyond any applicable grace and cure period under the Ground Lease or (B) if the Ground Lease terminates for any reason, in each case, within ten (10) days of the expiration of the applicable cure period (if any) and with respect to any such termination, the premises under the Ground Lease are not conveyed to Borrower.

Section 14.2. Remedies.

(a) If an Event of Default occurs, Lender may take any of the following actions (the "**Remedies**") without notice to Borrower:

(i) declare all or any portion of the Debt immediately due and payable ("**Acceleration**");

(ii) pay or perform any Obligation;

(iii) institute a Proceeding for the specific performance of any Obligation;

(iv) apply for and obtain the appointment of a Receiver to be vested with the fullest powers permitted by Law, without bond being required, which appointment may be made *ex parte*, as a matter of right and without regard to the value of the Property, the amount of the Debt or the solvency of Borrower or any other person liable for the payment or performance of any portion of the Obligations;

(v) directly, by its agents or representatives or through a Receiver appointed by a court of competent jurisdiction, enter on the Land and Improvements, take possession of the Property, dispossess Borrower and exercise Borrower's rights with respect to the Property, either in Borrower's name or otherwise;

(vi) institute a Proceeding for the foreclosure of this Security Instrument or, if applicable, sell by power of sale, all or any portion of the Property;

(vii) institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien of this Security Instrument for the balance of the Debt not then due;

(viii) exercise any and all rights and remedies granted to a secured party under the Uniform Commercial Code; and

(ix) pursue any other right or remedy available to Lender at Law, in equity or otherwise.

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(b) During the existence of an Event of Default, the license granted to Borrower in the Loan Documents to administer the Leases and collect Rents will terminate automatically without any action required of Lender.

Section 14.3. General Provisions Pertaining to Remedies.

(a) The Remedies are cumulative and may be pursued concurrently or otherwise, at such time and in such order as Lender may determine in its sole discretion and without presentment, demand, protest or further notice of any kind, all of which are expressly waived by Borrower.

(b) The enumeration in the Loan Documents of specific rights or powers will not be construed to limit any general rights or powers or impair Lender's rights with respect to the Remedies.

(c) If Lender exercises any of the Remedies, Lender will not be deemed a mortgagee-in-possession unless Lender has elected affirmatively to be a mortgagee-in-possession.

(d) Lender will not be liable for any act or omission of Lender in connection with the exercise of the Remedies.

(e) Lender's right to exercise any Remedy will not be impaired by any delay in exercising or failure to exercise the Remedy and the delay or failure will not be construed as extending any cure period or constitute a waiver of the default or Event of Default.

(f) If an Event of Default occurs, Lender's payment or performance or acceptance of payment or performance will not be deemed a waiver or cure of the Event of Default.

(g) Lender's acceptance of partial payment or receipt of Rents will not extend or affect any grace period, constitute a waiver of a default or Event of Default or constitute a rescission of Acceleration.

(h) At all times, until this Security Instrument is satisfied of record, the fee and leasehold estates in the Ground Lease Land (and/or in any other portion of the Property demised under the Ground Lease) will not merge without Lender's prior approval, which may be withheld in Lender's sole discretion, notwithstanding that the fee and leasehold estates are held by a single entity. If Borrower acquires the fee title, or any other estate, title or interest in any of the Ground Lease Land (and/or in any other portion of the Property demised under the Ground Lease), this Security Instrument immediately and automatically, without the need for any additional mortgage, assignment, pledge or conveyance to Lender, will encumber the newly acquired interest as a first lien with the same force and effect as though specifically deeded, mortgaged, assigned, pledged or conveyed in this Security Instrument. However, Borrower will deliver to Lender, at Lender's request, documents reasonably satisfactory to Lender evidencing Lender's first lien.

(i) If Borrower defaults under the Ground Lease, and Lender cures the default for purposes of the Ground Lease, Lender's action in and of itself will not cure the corresponding Event of Default.

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(j) If Borrower or any other entity exercises any right of redemption after foreclosure, the amount payable to effect the redemption will include all Rents paid and other sums advanced by Lender to satisfy obligations of Borrower, as lessee under the Ground Lease.

Section 14.4. General Provisions Pertaining to Receiver and other Remedies.

(a) If an Event of Default occurs, any court of competent jurisdiction will, upon application by Lender, appoint a Receiver as designated in the application and issue an injunction prohibiting Borrower from interfering with the Receiver, collecting Rents, disposing of any Rents or any part of the Property, committing waste or doing any other act that will tend to affect the preservation of the Leases, the Rents and the Property and Borrower approves the appointment of the designated Receiver or any other Receiver appointed by the court. Borrower agrees that the appointment may be made *ex parte* and as a matter of right to Lender, either before or after sale of the Property, without further notice, and without regard to the solvency or insolvency, at the time of application for the Receiver, of the person or persons, if any, liable for the payment of any portion of the Debt and the performance of any portion of the Obligations and without regard to the value of the Property or whether the Property is occupied as a homestead and without bond being required of the applicant.

(b) The Receiver will be vested with the fullest powers permitted by Law including all powers necessary or usual in similar cases for the protection, possession and operation of the Property and all the powers and duties of Lender as a mortgagee-in-possession as provided in this Security Instrument and may continue to exercise all the usual powers and duties until the Receiver is discharged by the court.

(c) In addition to the Remedies and all other available rights, Lender or the Receiver may take any of the following actions:

(i) take exclusive possession, custody and control of the Property and manage the Property so as to prevent waste;

(ii) require Borrower to deliver to Lender or the Receiver all keys, security deposits, operating accounts, prepaid Rents, past due Rents, Financial Books and Records and all original counterparts of the Leases, the Expansion REA and the Property Documents;

(iii) collect, sue for and give receipts for the Rents and, after paying all expenses of collection, including reasonable receiver's, broker's and attorney's fees, apply the net collections to any portion of the Debt selected by Lender in its sole discretion;

(iv) enter into, modify, extend, enforce, terminate, renew or accept surrender of Leases and evict tenants except that in the case of a Receiver, such actions may be taken only with the written consent of Lender as provided in this Security Instrument and in the Assignment;

(v) enter into, modify, extend, enforce, terminate or renew Property Documents or the Expansion REA except that in the case of a Receiver, such actions may be taken only

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with the written consent of Lender as provided in this Security Instrument and in the Assignment;

(vi) enter into, modify, extend, enforce, terminate or renew the Ground Lease, except that in the case of a Receiver, such actions may be taken only with the written consent of Lender as provided in this Security Instrument and in the Assignment;

(vii) appear in and defend any Proceeding brought in connection with the Property and bring any Proceeding to protect the Property as well as Borrower's and Lender's respective interests in the Property (unless any such Proceeding has been assigned previously to Lender in the Assignment, or if so assigned, Lender has not expressly assigned such Proceeding to the Receiver and consented to such appearance or defense by the Receiver) and

(viii) perform any act in the place of Borrower that Lender or the Receiver deems necessary (A) to preserve the value, marketability or rentability of the Property; (B) to increase the gross receipts from the Property; or (C) otherwise to protect Borrower's and Lender's respective interests in the Property.

(d) Borrower appoints Lender as Borrower's attorney-in-fact, at Lender's election, to perform any actions and to execute and record any instruments necessary to effectuate the actions described in this Section, in each instance only at Lender's election and only to the extent Borrower has failed to comply with the provisions of this Section.

Section 14.5. General Provisions Pertaining to Foreclosures and the Power of Sale. The following provisions will apply to any Proceeding to foreclose and to any sale of the Property by power of sale or pursuant to a judgment of foreclosure and sale:

(i) Lender's right to institute a Proceeding to foreclose or to sell by power of sale will not be exhausted by a Proceeding or a sale that is defective or not completed;

(ii) any sale may be postponed or adjourned by Lender by public announcement at the time and place appointed for the sale without further notice;

(iii) with respect to any sale pursuant to a judgment of foreclosure and sale or by power of sale, the Property may be sold as an entirety or in parcels, at one or more sales, at the time and place, on terms and in the order that Lender deems expedient in its sole discretion;

(iv) if a portion of the Property is sold pursuant to this Article XIV, the Loan Documents will remain in full force and effect with respect to any unmatured portion of the Debt and this Security Instrument will continue as a valid and enforceable first lien on and security interest in the remaining portion of the Property, subject only to the Permitted Exceptions, without loss of priority and without impairment of any of Lender's rights and remedies with respect to the unmatured portion of the Debt;

(v) Lender may bid for and acquire the Property at a sale and, in lieu of paying cash, may credit the amount of Lender's bid against any portion of the Debt selected by

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Lender in its sole discretion after deducting from the amount of Lender's bid the expenses of the sale, costs of enforcement and other amounts that Lender is authorized to deduct at Law, in equity or otherwise; and

(vi) Lender's receipt of the proceeds of a sale will be sufficient consideration for the portion of the Property sold and Lender will apply the proceeds as set forth in this Security Instrument.

Section 14.6. Application of Proceeds. Lender may apply the proceeds of any sale of the Property by power of sale or pursuant to a judgment of foreclosure and sale and any other amounts collected by Lender in connection with the exercise of the Remedies to payment of the Debt in such priority and proportions as Lender may determine in its sole discretion or in such priority and proportions as required by Law.

Section 14.7. Power of Attorney. Borrower appoints Lender as Borrower's attorney-in-fact to perform any actions necessary and incidental to exercising the Remedies, to the extent Borrower has failed to comply with Lender's requests to perform the same.

Section 14.8. Tenant at Sufferance. If Lender or a Receiver enters the Property in the exercise of the Remedies and Borrower is allowed to remain in occupancy of the Property, Borrower will pay to Lender or the Receiver, as the case may be, in advance, a reasonable rent for the Property occupied by Borrower. If Borrower fails to pay the rent, Borrower may be dispossessed by the usual Proceedings available against defaulting tenants.

Section 14.9. State Laws Pertaining to Remedies.

(a) Except as may be required by applicable Law, Lender may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trust and the enforcement of the rights and Remedies available, and may obtain orders or decrees directing, confirming or approving acts in the execution of the trust and the enforcement of the Remedies. Lender has no obligation to notify any party of any pending sale or any Proceeding, including, without limitation, actions in which Borrower will be a party, unless held or commenced and maintained by Lender under this Security Instrument.

(b) [Intentionally Omitted].

(c) **BORROWER PLEASE NOTE: IN THE EVENT OF YOUR DEFAULT, THIS SECURITY INSTRUMENT AND APPLICABLE LAW PERMITS LENDER TO SELL THE PROPERTY AT A SALE HELD WITHOUT SUPERVISION BY ANY COURT AFTER EXPIRATION OF A PERIOD DESCRIBED BY LAW. UNLESS YOU PROVIDE AN ADDRESS FOR THE GIVING OF NOTICE, YOU MAY NOT BE ENTITLED TO OTHER NOTICE OF THE COMMENCEMENT OF SALE PROCEEDINGS. BY EXECUTION OF THIS SECURITY INSTRUMENT, YOU CONSENT TO THIS PROCEDURE. IF YOU HAVE ANY QUESTIONS CONCERNING IT, YOU SHOULD CONSULT YOUR LEGAL ADVISOR. LENDER URGES YOU TO GIVE LENDER PROMPT NOTICE OF ANY CHANGE IN YOUR ADDRESS SO THAT YOU MAY RECEIVE ANY NOTICE OF DEFAULT AND NOTICE OF SALE GIVEN PURSUANT TO THIS SECURITY INSTRUMENT.**

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- (d) [Intentionally Omitted].
- (e) Borrower, in addition to, and without limitation of any other waivers contained in this Security Instrument, unconditionally waives any defense to the enforcement of this Security Instrument, including:
- (i) All presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Security Instrument;
 - (ii) Any right to require Lender to proceed against the other Person comprising Borrower or any guarantor, at any time or to proceed against or exhaust any security held by Lender at any time or to pursue any other remedy whatsoever at any time;
 - (iii) The defense of any statute of limitations affecting the liability of Borrower or any guarantor under the Loan Documents, or the enforcement hereof, to the extent permitted by law;
 - (iv) Any defense arising by reason of any invalidity or unenforceability of (or any limitation of liability in) any of the Loan Documents or any disability of Borrower or of any manner in which Lender has exercised its Remedies under the Loan Documents, or by any cessation from any cause whatsoever of the liability of Borrower or any guarantor;
 - (v) Any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower;
 - (vi) Any defense based upon an election of Remedies by Lender, including any election to proceed by judicial or non judicial foreclosure of any security, whether real property or personal property security, or by deed in lieu thereof, and whether or not every aspect of any foreclosure sale is commercially reasonable, or any election of Remedies, including Remedies relating to real property or personal property security, which destroys or otherwise impairs the subrogation rights of Borrower or the rights of Borrower to proceed against the other Person comprising Borrower or any guarantor for reimbursement, or both;
 - (vii) Any defense based upon any Law which provides that the obligation of a surety must be neither larger in amount nor in any other aspects more burdensome than that of a principal;
 - (viii) Any duty of Lender to advise Borrower of any information known to Lender regarding the financial condition of the other Person comprising Borrower and all other circumstances affecting the other Person comprising Borrower's ability to perform their obligations to Lender, it being agreed that each Borrower assumes the responsibility for being and keeping informed regarding such condition or any such circumstances; and
 - (ix) Any right of subrogation, reimbursement, exoneration, contribution or indemnity, or any right to enforce any Remedy which Lender now has or may hereafter have

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against Borrower or any benefit of, or any right to participate in, any security now or hereafter held by Lender.

(f) Borrower shall not be released or discharged, either in whole or in part, by Lender's failure or delay to (i) perfect or continue the perfection of any lien or security interest in any collateral which secures the Obligations of Borrower or (ii) protect the Property covered by such lien or security interest.

(g) To the extent any of the obligations of Guarantor under the Loan, this Security Instrument or any other Loan Document are deemed to constitute a guaranty, Guarantor waives all rights and defenses that Guarantor may have because the Debt is secured by real property. This means, among other things: (i) Lender or any other indemnified party may collect from Guarantor with respect to such obligation without first foreclosing on any real or personal property collateral pledged by Lender; (ii) if Lender or any other indemnified party forecloses on any real property collateral pledged by Guarantor: (y) the amount of the Debt may be reduced only by the price for which such real property collateral is sold at the foreclosure sale, even if such real property collateral is worth more than the sale price, and (z) Lender or any other indemnified party may collect from Guarantor with respect to such obligation even if Lender or any other indemnified party, by foreclosing on such real property collateral, has destroyed any right such Guarantor may have to collect from Guarantor under the Loan. This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have to any of the obligations of Guarantor in the nature of a guaranty under the Loan, this Security Instrument or any other Loan Document because the Debt is secured by real property.

ARTICLE XV

LIMITATION OF LIABILITY

Section 15.1. Limitation of Liability.

(a) Notwithstanding any provision in the Loan Documents to the contrary, except as set forth in subsections (b) and (c) below, if Lender seeks to enforce the collection of the Debt, Lender will foreclose this Security Instrument instead of instituting suit on the Note. If a lesser sum is realized from a foreclosure of this Security Instrument and sale of the Property than the then outstanding Debt, Lender will not institute any Proceeding against Borrower or Borrower's general partners, direct or indirect owners or affiliates, if any, for or on account of the deficiency, except as set forth in subsections (b) and (c) below.

(b) The limitation of liability in subsection (a) above will not affect or impair (i) the lien of this Security Instrument or Lender's other rights and Remedies under the Loan Documents or Environmental Indemnity, including Lender's right as beneficiary or secured party to commence an action to foreclose any lien or security interest Lender has under the Loan Documents; (ii) the validity of the Loan Documents, the Environmental Indemnity or the Obligations; (iii) Lender's rights under any Loan Documents that are not subject to this Section 15.1 and are expressly recourse; or (iv) Lender's right to present and collect on any letter of credit or other credit enhancement document held by Lender in connection with the Obligations.

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(c) The following are excluded and excepted from the limitation of liability in subsection (a) and Lender may recover personally against Borrower for the following:

(i) all losses suffered and liabilities and expenses incurred by Lender relating to any fraud, intentional misrepresentation or intentional omission (where an express obligation to disclose exists under the Loan Documents) by Borrower or any of Borrower's partners, members, officers, directors, shareholders or principals;

(ii) all Rents derived from the Property after a default under the Loan Documents or the Environmental Indemnity which default is a basis of a Proceeding by Lender to enforce the collection of the Debt and all moneys that, on the date such a default occurs, are on deposit in one or more accounts used by or on behalf of Borrower relating to the operation of the Property, except to the extent properly applied to payment of Debt Service Payments, Impositions, Insurance Premiums and any reasonable and customary expenses incurred by Borrower in the operation, maintenance and leasing of the Property or delivered to Lender or otherwise under Lender's control;

(iii) subject to the terms of the Environmental Indemnity, the cost of remediation (either legally required or required under the environmental indemnity of even date with this Security Instrument made by Guarantor for the benefit of Lender) of any Environmental Activity affecting the Property, any diminution in the value of the Property arising from any Environmental Activity affecting the Property resulting in a loss to Lender and any other losses suffered and liabilities and expenses incurred by Lender relating to a default under Article IX;

(iv) all security deposits collected by Borrower or any of Borrower's predecessors to the extent not refunded to tenants in accordance with their respective Leases, applied in accordance with the Leases or Law or delivered to Lender, and all tenant letters of credit and advance rents (other than amounts which are subject to later reconciliation, such as estimated payments of common area maintenance charges or percentage rent) collected by Borrower or any of Borrower's predecessors to the extent not applied in accordance with the Leases or delivered to Lender;

(v) any Termination Fee (as defined in the Assignment) received by Borrower to the extent not paid to Lender (or an escrow agent selected by Lender) in accordance with the terms and conditions of the Assignment;

(vi) the replacement cost of any Fixtures or Personal Property removed from the Property during a Potential Monetary Default or Event of Default in violation of the terms of this Security Instrument;

(vii) all losses suffered and liabilities and expenses incurred by Lender relating to any acts or omissions by Borrower that result in intentional waste (which shall include economic and non-physical waste only in the event Borrower engages in such action or omissions in bad faith) on the Property;

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(viii) all protective advances and other payments made by Lender pursuant to express provisions of the Loan Documents to protect Lender's security interest in the Property or to protect the assignment of the property described in and effected by the Assignment to the extent funds from the Property are at the time of such advance or payment by Lender sufficient to pay or reserve for the costs therefore and Borrower has access to the same, but Borrower fails to pay or reserve for such costs in a manner necessary to protect the Lender's security interest and/or assignment as and to the extent required by the Loan Documents;

(ix) all losses suffered and liabilities and expenses incurred by Lender from all mechanics' or similar liens relating to work performed on or materials delivered to the Property prior to Lender exercising its Remedies, but only to the extent Lender had advanced funds to Borrower to pay for the work or materials;

(x) all Insurance Proceeds and/or Condemnation Awards released to Borrower that are not applied by Borrower in accordance with this Security Instrument or not paid by Borrower to Lender as and to the extent required under this Security Instrument (to the extent of such misapplication or failure to pay);

(xi) all losses suffered and liabilities and expenses incurred by Lender relating to forfeiture or threatened forfeiture of the Property to the Government;

(xii) all losses suffered and liabilities and expenses incurred by Lender relating to any default by Borrower under any of the provisions of this Security Instrument relating to ERISA;

(xiii) all losses suffered and liabilities and expenses incurred by Lender relating to any default by Borrower or Guarantor under any of the provisions of this Security Instrument relating to Anti-Terrorism Laws or money-laundering laws;

(xiv) all losses suffered and liabilities and expenses incurred by Lender relating to any default by Borrower under Section 17.2 of this Security Instrument;

(xv) all losses suffered and liabilities and expenses incurred by Lender relating to the failure to maintain, or to pay the Insurance Premiums for, any insurance required to be maintained under the Loan Documents to the extent funds from the Property are at the relevant time sufficient to pay or reserve for the costs therefore and Borrower has access to the same, but Borrower fails to pay or reserve for such costs;

(xvi) all losses suffered and liabilities and expenses incurred by Lender to enforce any Leases entered into by Borrower or its Affiliates, where Borrower or its Affiliate is the tenant;

(xvii) all losses suffered and liabilities and expenses incurred by Lender in connection with (A) a voluntary default by Borrower beyond any applicable grace and cure period under the Ground Lease, which default results in the termination or rejection in bankruptcy of the Ground Lease, by the Ground Lessor or (B) any voluntary termination of the Ground Lease, by Borrower, in violation of the terms of the Loan Documents (except

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that recourse shall not arise under this clause (xvii) if (i) cash flow from the Property for the 12-month period prior to such act is insufficient to make such payment, (ii) cash flow for such purposes shall be calculated as if during such 12-month period Borrower has not paid any distributions or dividends to any direct or indirect owner of Borrower, nor made any payment on account of any debt owing to or by any affiliate of Borrower and (iii) Borrower shall have provided to Lender written notice of the anticipated non-payment not later than thirty (30) days prior to the due date of the applicable Impositions); and

(xviii) all losses suffered and liabilities and expenses incurred by Lender relating to (A) during the course of construction, personal injury or property damaged caused by the construction or contractors performing the construction of the Expansion Connection; (B) claims by third parties that the construction activity is in violation of an agreement to which the Borrower is a party or otherwise binding upon the owner of the Property; (C) protective advances made by Lender in connection with the maintenance or repair of the Expansion Connection or remediation or prevention of safety issues related to the Expansion Connection; and or (D) payment for and performance of the construction, including any lien claims from contractors or subcontractors with respect to such work undertaken by Borrower and further including the cost of relocating any tenant displaced by work undertaken in connection with the Expansion Connection (including, without limitation, costs and claims associated with the relocation of Nordstrom) (items (A) through (D) being the “Expansion Liabilities”); provided, however, with respect to claims arising under subclauses (A); (B) or (D) of this clause (xviii), Lender will look first to the Policies for its recovery of such losses if and to the extent the subject Expansion Liability is an insured event, or will otherwise permit Borrower to pursue an insurance claim with respect thereto prior to commencing a claim under this clause (xviii);

Notwithstanding the foregoing, the limitation of liability contained in this Article XV SHALL BECOME NULL AND VOID and shall be of no further force and effect and Lender may recover personally against Borrower and its general partners, if any, in the event of:

(i) a voluntary bankruptcy or insolvency proceeding of Borrower or any General Partner if such proceeding is not dismissed in accordance with the terms of this Security Instrument;

(ii) an involuntary bankruptcy or insolvency proceeding of Borrower or any General Partner, in which Borrower or General Partner or, any of its principals, officers, general partners or members, or its related Guarantor colludes with creditors in such bankruptcy or insolvency proceeding if such proceeding is not dismissed in accordance with the terms of this Security Instrument;

(iii) a default by Borrower, General Partner or any general partner, manager or managing member of Borrower or General Partner of any of the covenants or requirements contained in Section 13.3, except to the extent that such default results from the insufficiency of funds available to Borrower from the Property, which lack of funds is not caused by the misapplication of funds from the Property in violation hereof or the other Loan Documents or by any other act or matter described in Section 15.1(c) above, provided that liability under this clause (iii) shall be limited to any losses or liabilities suffered by Lender as a result thereof unless such breach is the basis for the substantive consolidation of Borrower in a Proceeding under the Bankruptcy Code;

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(iv) the failure of Borrower to obtain Lender's consent to a Transfer that is not permitted under Article XII, including the prohibition on any Transfer that results in a violation of ERISA or any Anti-Terrorism Laws, provided that liability under this clause (iv) shall be limited to losses or liability suffered by Lender (1) if the Transfer does not pertain to a material portion of the Property, or (2) if the Transfer would otherwise constitute a Permitted Transfer but-for Borrower's failure to comply with any requirement in Article XII with respect to notice and/or the delivery of documentation or other information to Lender and Borrower satisfies such condition(s) within 30 days after notice from Lender, provided, further, that in no event shall Lender assert any liability under this Section 15.1 with respect to any Transfer that would otherwise constitute a Permitted Transfer but-for the fact that the condition set forth in Section 12.2(b)(ii) was not satisfied in connection with such Transfer. For purposes of satisfying any requirement in Article XII with respect to notice and/or the delivery of documentation or other information to Lender, such requirement that was to be performed prior to the Transfer shall be deemed satisfied if undertaken within 30 days after notice from Lender to Borrower. In addition, solely for purposes of this clause (iv) and no other purpose, the following items shall not, in and of themselves, be deemed to constitute "Transfers" under this Security Instrument: (A) the amendment, extension or renewal of, or any other action taken with respect to, any Property Document or the Expansion REA to the extent the same is done in accordance with Section 8.2 hereof, (B) settlement of any claim, dispute, litigation or regulatory proceeding, to the extent such settlement does not result in any conveyance of any portion of the real estate comprising the Property or a transfer of any direct or indirect ownership interest in Borrower or other material collateral for the Loan, (C) the expenditure of funds by Borrower or any other party (provided the foregoing shall not be deemed in any way to limit the applicability of clause (iii) above to the extent applicable to any particular expenditure of funds), or (D) the disposal, sale or other disposition of personal property which is no longer necessary to the operation of the Property, including without limitation the disposition of personal property abandoned by any tenant of the Property. The foregoing sentence shall not, in any way, be deemed to authorize Borrower to undertake any of the actions set forth in the foregoing subclauses (A) through (D) to the extent the same are otherwise prohibited pursuant to the Loan Documents, or to constitute a waiver by Lender or otherwise limit any remedy available to Lender pursuant to the Loan Documents, it being agreed that the sole purpose of the preceding sentence is to clarify the scope of full recourse liability pursuant to this clause (iv).

(d) Nothing under subparagraph (a) above will be deemed to be a waiver of any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code or under any other Law relating to bankruptcy or insolvency to file a claim for the full amount of the Debt or to require that all collateral will continue to secure all of the Obligations in accordance with the Loan Documents and under the Environmental Indemnity.

(e) In addition, notwithstanding anything appearing to the contrary in any Loan Document, but without impairing the obligations of Guarantor under each Guaranty, the Environmental Indemnity, any Bottom Guaranty or any other guaranty or indemnity that Guarantor may deliver to Lender on or after the date hereof (and to which it is a party), no direct or indirect partner, member, or shareholder of Borrower, General Partner, Guarantor, Manager, or any other signatory affiliated with Borrower or General Partner to any Loan Document, including without limitation any exchange accommodation titleholder or its direct or indirect owners ("**Borrower Party**") (or any officer, director, agent, member, manager, personal representative, trustee or employee of any such direct or indirect partner, member or shareholder) shall be personally liable for

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the performance of the obligations of, or in respect of any claims against, any such Borrower Party arising under any Loan Document. No personal judgment shall be sought or obtained against any of the foregoing in connection with the Loan (other than Guarantor or any affiliate of Guarantor under any guaranty or indemnity that such party may deliver to Lender on or after the date hereof and to which it is a party).

ARTICLE XVI

WAIVERS

Section 16.1. WAIVER OF STATUTE OF LIMITATIONS. BORROWER WAIVES THE RIGHT TO CLAIM ANY STATUTE OF LIMITATIONS AS A DEFENSE TO BORROWER'S PAYMENT AND PERFORMANCE OF THE OBLIGATIONS.

Section 16.2. WAIVER OF NOTICE. BORROWER WAIVES THE RIGHT TO RECEIVE ANY NOTICE FROM LENDER WITH RESPECT TO THE LOAN DOCUMENTS OR THE ENVIRONMENTAL INDEMNITY EXCEPT FOR THOSE NOTICES THAT LENDER IS EXPRESSLY REQUIRED TO DELIVER PURSUANT TO THE LOAN DOCUMENTS.

Section 16.3. WAIVER OF MARSHALLING AND OTHER MATTERS. BORROWER WAIVES THE BENEFIT OF ANY RIGHTS OF MARSHALLING OR ANY OTHER RIGHT TO DIRECT THE ORDER IN WHICH ANY OF THE PROPERTY WILL BE (i) SOLD; OR (ii) MADE AVAILABLE TO ANY ENTITY IF THE PROPERTY IS SOLD BY POWER OF SALE OR PURSUANT TO A JUDGMENT OF FORECLOSURE AND SALE. BORROWER ALSO WAIVES THE BENEFIT OF ANY LAWS RELATING TO APPRAISEMENT, VALUATION, STAY, EXTENSION, REINSTATEMENT, MORATORIUM, HOMESTEAD AND EXEMPTION RIGHTS OR A SALE IN INVERSE ORDER OF ALIENATION.

Section 16.4. WAIVER OF TRIAL BY JURY. BORROWER WAIVES TRIAL BY JURY IN ANY PROCEEDING BROUGHT BY OR AGAINST, OR COUNTERCLAIM OR CROSS-COMPLAINT ASSERTED BY OR AGAINST, LENDER RELATING TO THE LOAN, THE PROPERTY DOCUMENTS, THE EXPANSION REA OR THE LEASES.

Section 16.5. WAIVER OF COUNTERCLAIM. BORROWER WAIVES THE RIGHT TO ASSERT A COUNTERCLAIM OR CROSS-COMPLAINT, OTHER THAN COMPULSORY OR MANDATORY COUNTERCLAIMS OR CROSS-COMPLAINTS, IN ANY PROCEEDING LENDER BRINGS AGAINST BORROWER RELATING TO THE LOAN, INCLUDING ANY PROCEEDING TO ENFORCE REMEDIES.

Section 16.6. WAIVER OF JUDICIAL NOTICE AND HEARING. BORROWER WAIVES ANY RIGHT BORROWER MAY HAVE UNDER LAW TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THE LOAN DOCUMENTS OR THE ENVIRONMENTAL INDEMNITY TO LENDER AND BORROWER WAIVES THE RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THE LOAN

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DOCUMENTS ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING.

Section 16.7. WAIVER OF SUBROGATION. BORROWER WAIVES ALL RIGHTS OF SUBROGATION TO LENDER'S RIGHTS OR CLAIMS RELATED TO OR AFFECTING THE PROPERTY OR ANY OTHER SECURITY FOR THE LOAN UNTIL THE LOAN IS PAID IN FULL AND ALL FUNDING OBLIGATIONS UNDER THE LOAN DOCUMENTS HAVE BEEN TERMINATED.

Section 16.8. GENERAL WAIVER. BORROWER ACKNOWLEDGES THAT (A) BORROWER AND BORROWER'S PARTNERS, MEMBERS OR PRINCIPALS, AS THE CASE MAY BE, ARE KNOWLEDGEABLE BORROWERS OF COMMERCIAL FUNDS AND EXPERIENCED REAL ESTATE DEVELOPERS OR INVESTORS WHO UNDERSTAND FULLY THE EFFECT OF THE ABOVE PROVISIONS; (B) LENDER WOULD NOT MAKE THE LOAN WITHOUT THE PROVISIONS OF THIS ARTICLE XVI; (C) THE LOAN IS A COMMERCIAL OR BUSINESS LOAN UNDER THE LAWS OF THE STATE OR COMMONWEALTH WHERE THE PROPERTY IS LOCATED, NEGOTIATED BY LENDER AND BORROWER AND THEIR RESPECTIVE ATTORNEYS AT ARMS LENGTH; AND (D) ALL WAIVERS BY BORROWER IN THIS ARTICLE XVI AND OTHERWISE IN THIS SECURITY INSTRUMENT HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY, AFTER BORROWER FIRST HAS BEEN INFORMED BY COUNSEL OF BORROWER'S OWN CHOOSING AS TO POSSIBLE ALTERNATIVE RIGHTS, AND HAVE BEEN MADE AS AN INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A KNOWN RIGHT AND PRIVILEGE. THE FOREGOING ACKNOWLEDGMENT IS MADE WITH THE INTENT THAT LENDER AND ANY SUBSEQUENT HOLDER OF THE NOTE WILL RELY ON THE ACKNOWLEDGMENT.

Section 16.9. Illinois Waiver. In addition to any other provision of this Security Instrument pertaining to waivers, Borrower hereby voluntarily and knowingly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Security Instrument, 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 Borrower and of all other persons are and will be deemed to be hereby waived to the full extent permitted by the provisions of 735 ILCS 5/15-1601 of the Act^R

ARTICLE XVII

NOTICES

Section 17.1. Notices. Except as otherwise required by Laws, all acceptances, approvals, consents, demands, notices, requests, waivers and other communications (the "Notices") required or permitted to be given under the Loan Documents must be in writing and (a) delivered personally by a process server providing a sworn declaration evidencing the date of service, the individual served, and the address where the service was made; (b) sent by certified mail, return receipt requested; or (c) delivered by nationally recognized overnight delivery service that provides evidence of the date of delivery (for next morning delivery if sent by overnight delivery service), in all cases with charges prepaid, addressed to the appropriate party at its address listed below:

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If to Lender: MetLife Real Estate Lending, LLC
 c/o MetLife Real Estate
 125 South Wacker, Ste. 100
 Chicago, Illinois 60606
 Attention: Director – Loan Production
 Re: Fashion Outlets of Chicago - Loan #703137

with a copy to: Dechert LLP
 Circa Centre
 2929 Arch Street
 Philadelphia, Pennsylvania 19104
 Attention: Matthew B. Ginsburg

If to Borrower: c/o The Macerich Company
 401 Wilshire Boulevard, Suite 700
 Santa Monica, California 90401
 Attention: Jennifer Jensen

c/o Macerich
 11411 North Tatum Boulevard
 Phoenix, Arizona 85028
 Attention: Matt Ryan

with a copy to: c/o The Macerich Company
 401 Wilshire Boulevard, Suite 700
 Santa Monica, California 90401
 Attention: Chief Legal Officer and
 Chief Financial Officer

with a copy to: DLA Piper LLP (US)
 550 S. Hope Street, Suite 2300
 Los Angeles, California 90071
 Attention: Michael D. Hamilton, Esq.

Lender and Borrower each may change from time to time the address to which Notices must be sent, by notice given in accordance with the provisions of this Section. All Notices given in accordance with the provisions of this Section will be deemed to have been received on the earliest of (i) actual receipt; (ii) the recipient's rejection of delivery; or (iii) 3 Business Days after having been deposited in any mail depository regularly maintained by the United States postal service, if sent by certified mail, or 1 Business Day after having been deposited with a nationally recognized overnight delivery service, if sent by overnight delivery or on the date of personal service, if served by a process server.

Section 17.2. Change in Borrower's Legal Name, Place of Business or State of Formation.
 Borrower will notify Lender in writing prior to any change in Borrower's legal name, place of

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business or state of organization/formation/incorporation, including as a result of, or in connection with, any Transfer, including any Permitted Transfer.

ARTICLE XVIII

MISCELLANEOUS

Section 18.1. Applicable Law. The Loan Documents are governed by and will be construed in accordance with the Laws of the state or commonwealth in which the Property is located without regard to conflict of law provisions, except to the extent that the Uniform Commercial Code requires otherwise.

Section 18.2. Usury Limitations. Borrower and Lender intend to comply with all Laws with respect to the charging and receiving of interest. Any amounts charged or received by Lender for the use or forbearance of the Principal to the extent permitted by Law, will be amortized and spread throughout the Term until payment in full so that the rate or amount of interest charged or received by Lender on account of the Principal does not exceed the Maximum Interest Rate. If any amount charged or received under the Loan Documents that is deemed to be interest is determined to be in excess of the amount permitted to be charged or received at the Maximum Interest Rate, the excess will be deemed to be a prepayment of Principal when paid, without premium, and any portion of the excess not capable of being so applied will be refunded to Borrower. If during the Term the Maximum Interest Rate, if any, is eliminated, then for the purposes of the Loan, there will be no Maximum Interest Rate.

Section 18.3. Lender's Discretion. Wherever under the Loan Documents any matter is required to be satisfactory to Lender, Lender has the right to approve or determine any matter or Lender has an election, Lender's approval, determination or election will be made in Lender's reasonable discretion unless expressly provided to the contrary.

Section 18.4. Unenforceable Provisions. If any provision in the Loan Documents or the Environmental Indemnity is found to be illegal or unenforceable or would operate to invalidate any of the Loan Documents or the Environmental Indemnity, then the provision will be deemed expunged and the Loan Documents and the Environmental Indemnity will be construed as though the provision was not contained in the Loan Documents and the Environmental Indemnity and the remainder of the Loan Documents and the Environmental Indemnity will remain in full force and effect.

Section 18.5. Survival of Borrower's Obligations. Borrower's representations and warranties (as to the time made) and covenants contained in the Loan Documents and the Environmental Indemnity will continue in full force and effect and survive (i) satisfaction of the Obligations; (ii) release of the lien of this Security Instrument; (iii) assignment or other transfer of all or any portion of Lender's interest in the Loan Documents and the Environmental Indemnity or the Property; (iv) Lender's exercise of any of the Remedies or any of Lender's other rights under the Loan Documents or the Environmental Indemnity; (v) a Transfer; (vi) amendments to the Loan Documents or the Environmental Indemnity; and (vii) any other act or omission that might otherwise be construed as a release or discharge of Borrower.

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Section 18.6. Relationship Between Borrower and Lender: No Third Party Beneficiaries.

(a) Lender is not a partner of or joint venturer with Borrower or any other entity as a result of the Loan or Lender's rights under the Loan Documents and the Environmental Indemnity; the relationship between Lender and Borrower is strictly that of creditor and debtor. Each Loan Document and the Environmental Indemnity is an agreement between the parties to that Loan Document or and the Environmental Indemnity, as applicable, for the mutual benefit of the parties and no Person other than the parties to that Loan Document or the Environmental Indemnity, as applicable, will be a third party beneficiary or will have any claim against Lender or Borrower by virtue of the Loan Document or the Environmental Indemnity, as applicable. As between Lender and Borrower, any actions taken by Lender under the Loan Documents and the Environmental Indemnity will be taken for Lender's protection only, and Lender has not and will not be deemed to have assumed any responsibility to Borrower or to any other Person by virtue of Lender's actions.

(b) All conditions to Lender's performance of its obligations under the Loan Documents and the Environmental Indemnity are imposed solely for the benefit of Lender. No entity other than Lender will have standing to require satisfaction of the conditions in accordance with their provisions or will be entitled to assume that Lender will refuse to perform its obligations in the absence of strict compliance with any of the conditions.

Section 18.7. Partial Releases, Extensions, Waivers. Lender may: (i) release any part of the Property or any Person obligated for any of the Obligations; (ii) extend the time for payment or performance of any of the Obligations or otherwise amend the provisions for payment or performance by agreement with any Person that is obligated for the Obligations or that has an interest in the Property; (iii) accept additional security for the payment and performance of the Obligations; and (iv) waive any Person's performance of an Obligation, release any Person or individual now or in the future liable for the performance of the Obligation or waive the exercise of any Remedy or option. Lender may exercise any of the foregoing rights without notice, without regard to the amount of any consideration given, without affecting the priority of the Loan Documents, without releasing any Person not specifically released from its obligations under the Loan Documents, without releasing any guarantor(s) or surety(ies) of any of the Obligations, without effecting a novation of the Loan Documents and, with respect to a waiver, without waiving future performance of the Obligation or exercise of the Remedy waived.

Section 18.8. Service of Process. Borrower irrevocably consents to service of process by registered or certified mail, postage prepaid, return receipt requested, to Borrower at its address set forth in Article XVII.

Section 18.9. Entire Agreement. Oral agreements or commitments between Borrower and Lender to lend money, to extend credit or to forbear from enforcing repayment of a debt, including promises to extend or renew the debt, are not enforceable. Any agreements between Borrower and Lender relating to the Loan are contained in the Loan Documents and the Environmental Indemnity, which contain the complete and exclusive statement of the agreements between Borrower and Lender, except as Borrower and Lender may later agree in writing to amend the Loan Documents and the Environmental Indemnity. The language of each Loan Document and the Environmental Indemnity will be construed as a whole according to its fair meaning and will not be construed against the party by or for whom it was drafted.

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Section 18.10. No Oral Amendment. The Loan Documents may not be amended, waived or terminated orally or by any act or omission made individually by Borrower or Lender but may be amended, waived or terminated only by a written document signed by the party against which enforcement of the amendment, waiver or termination is sought.

Section 18.11. Lost or Destroyed Note. If the Note is lost, mutilated, destroyed or stolen, Borrower will deliver to Lender a new, substitute note containing the same provisions as the Note, provided that Borrower is furnished with reasonably satisfactory evidence of the loss, mutilation, destruction or theft of the Note, together with a customary lost note indemnity.

Section 18.12. Covenants Run with the Land. Subject to the restrictions on transfer contained in Article XII and except as otherwise expressly set forth herein, all of the covenants of this Security Instrument and the Assignment run with the Land, will bind all parties hereto and all tenants and subtenants of the Land or the Improvements and their respective heirs, executors, administrators, successors and assigns, and all occupants and subsequent owners of the Property, and will inure to the benefit of Lender and all subsequent holders of the Note and this Security Instrument.

Section 18.13. Time of the Essence. Time is of the essence with respect to Borrower's payment and performance of the Obligations.

Section 18.14. Subrogation. If the Principal or any other amount advanced by Lender is used directly or indirectly to pay off, discharge or satisfy all or any part of an encumbrance affecting the Property, then Lender is subrogated to the encumbrance and to any security held by the holder of the encumbrance, all of which will continue in full force and effect in favor of Lender as additional security for the Obligations.

Section 18.15. Joint and Several Liability. If Borrower consists of more than one person or entity, the obligations and liabilities of each such person or entity under this Security Instrument are joint and several.

Section 18.16. Successors and Assigns. The Loan Documents bind the parties to the Loan Documents and their respective successors, assigns, heirs, administrators, executors, agents and representatives and inure to the benefit of Lender and its successors, assigns, heirs, administrators, executors, agents and representatives.

Section 18.17. Duplicates and Counterparts. Duplicate counterparts of any of the Loan Documents and the Environmental Indemnity, other than the Note, may be executed and together will constitute a single original document.

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ARTICLE XIX

[INTENTIONALLY OMITTED]

ARTICLE XX

ADDITIONAL PROVISIONS PERTAINING TO STATE LAWS

Section 20.1. Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article XX and the other terms and conditions of this Security Instrument, the terms and conditions of this Article XX shall control and be binding.

Section 20.2. Illinois Mortgage Foreclosure Law.

(a) The law applicable to any foreclosure of this instrument shall be the Illinois Mortgage Foreclosure Law, Illinois Compiled Statutes, Chapter 735, Act 5, Section 15-1101, et seq., as from time to time amended (the "Act").

(b) In the event that any provision in this Security Instrument shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Act.

(c) Lender 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, to the maximum extent permitted by law, Lender 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 of this Security Instrument shall grant to Lender any rights or remedies upon the occurrence and during the continuation of an Event of Default which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law.

(d) Without limiting the generality of the foregoing, all expenses incurred by Lender upon the occurrence and during the continuation of an Event of Default to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Security Instrument, shall be added to the Indebtedness.

(e) Borrower acknowledges that the transaction of which the Borrower is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act), and upon the occurrence and during the continuation of an Event of Default to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption to the extent allowed under Section 15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

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Section 20.3. Mortgage Waivers.

(a) Except to the extent contrary to law, Borrower agrees that upon the occurrence and during the continuation of an Event of Default, Borrower will not at any time insist upon or plead or in any manner whatsoever claim the benefit of any valuation, stay, extension, or exemption law now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Security Instrument or the absolute sale of the Property or the possession thereof by any purchaser at any sale made pursuant to any provision hereof, or pursuant to the decree of any court of competent jurisdiction; but Borrower, for Borrower and all who may claim through or under Borrower, so far as Borrower or those claiming through or under Borrower now or hereafter lawfully may, hereby waives upon the occurrence and during the continuation of an Event of Default the benefit of all such laws. Except to the extent contrary to law, Borrower hereby waives upon the occurrence and during the continuation of an Event of Default any and all right to have the Property marshaled upon any foreclosure of this Security Instrument, or sold in inverse order of alienation, and agrees that Lender or any court having jurisdiction to foreclose this Security Instrument may sell the Property as an entirety. If any law now or hereafter in force referred to in this paragraph of which the parties or their successors might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this paragraph, to the extent not prohibited by law.

(b) In the event of the commencement of judicial proceedings to foreclose this Security Instrument, Borrower, on behalf of Borrower, its successors and assigns, and each and every person or entity they may legally bind acquiring any interest in or title to the Property subsequent to the date of this Security Instrument: (i) expressly waives any and all rights of appraisal, valuation, stay, extension and (to the extent permitted by law) reinstatement and redemption under any order or decree of foreclosure of this Security Instrument; and (ii) to the extent permitted by applicable law, agrees that when sale is had under any decree of foreclosure of this Security Instrument, upon confirmation of such sale, the officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to any purchaser at such sale a deed conveying the Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.

Section 20.4. Maximum Amount Secured. This Security Instrument shall secure the payment of any amounts advanced from time to time under the Note, the Loan Agreement and the other Loan Documents, or under other documents stating that such advances are secured hereby. This Security Instrument also secures any and all future obligations arising under or in connection with this Security Instrument, the Note, the Loan Agreement and the other Loan Documents, which future obligations shall have the same priority as if all such obligations were made on the date of execution hereof. Nothing in this Section 20.4 or in any other provisions of this Security Instrument shall be deemed an obligation on the part of Lender to make any future advances of any sort. Notwithstanding any future advances or other advances referred to in this Section 20.4 or Section 20.6 or any other provision of this Security Instrument to the contrary, the maximum principal indebtedness secured by this Security Instrument shall not exceed two hundred percent (200%) of the face amount of the Note. As of the date of this Security Instrument, the principal amount secured by the Note is the sum of \$300,000,000.00.

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Section 20.5. Business Loan. Borrower covenants and agrees that (i) all of the proceeds of the Loan secured by this Security Instrument will be used solely for business purposes and in furtherance of the regular business affairs of Borrower, (ii) the beneficiary of Borrower is a "business," as that term is defined in the Illinois Interest Act, Illinois Compiled Statutes, Chapter 815 ILCS 205/0.01, et seq., including Section 4(1)(c) thereof, (iii) the entire principal obligation secured hereby constitutes: (A) a "business loan," as that term is used in Section 205/4(1)(c) thereof; and (B) a "loan secured by a mortgage on real estate" within the purview and operation of Section 205/4(1)(l) thereof, and (iv) the indebtedness secured hereby is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Section 1601m, et seq. and has been entered into solely for business purposes of Borrower and for Borrower's investment or profit, as contemplated by said section.

Section 20.6. Protective and Other Advances. Without limiting any of the other terms or provisions of this Security Instrument or any other Loan Documents, all advances, disbursements and/or expenditures made by Lender from time to time in accordance with the terms of this Security Instrument and/or any other Loan Document(s), or otherwise authorized or contemplated by the Act (or other applicable law), whether made before, during or after a foreclosure of this Security Instrument, before or after judgment of foreclosure therein, before or after any sale of the Property or before, during or after the pendency of any claims, demands, proceedings, causes of action or suits related to any of the foregoing, together with applicable interest thereon (as provided for in and/or contemplated by this Security Instrument, any other Loan Document(s) or applicable law), shall be secured by this Security Instrument (and shall constitute part of the Obligations hereunder) and shall have the benefit of all applicable provisions of the Act (or other applicable law, as the case may be). Without in any way limiting the generality of the foregoing, any advances, disbursements or expenditures described in Section 15-1302(b) of the Act that are made by Lender from time to time shall have the benefit of the provisions of the Act applicable thereto, and any advances, disbursements or expenditures in the nature of "future advances", as described or defined in the Act or any other applicable Illinois law, that are made by Lender from time to time shall have the benefit of the provisions of the Act or such other applicable law (as the case may be). Nothing contained in this Section 20.6 shall be deemed or construed to obligate Lender to make any advance, disbursement or expenditure of any kind.

Section 20.7. Maturity Date. The Loan shall be due and payable in full on or before February 1, 2031.

Section 20.8. Collateral Protection Act. Pursuant to the terms of the Collateral Protection Act, Illinois Compiled Statutes, Chapter 815 ILCS 180/1 et seq., Borrower is hereby notified that, unless Borrower provides Lender with evidence of the insurance required by this Security Instrument or any other Loan Document, Lender may purchase insurance at Borrower's expense to protect Lender's interest in the Property or any other collateral for the indebtedness secured hereby. This insurance may, but need not, protect Borrower's interests. The coverage Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Property or any other collateral for the indebtedness secured hereby. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required under this Security Instrument or any other Loan Document. If Lender purchases insurance for the Property or any other collateral for the indebtedness secured hereby, Borrower shall be responsible for the costs of that insurance,

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including the insurance premiums, interest and any other charges that Lender may lawfully impose 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 indebtedness secured hereby. The costs of the insurance may be more than the cost of insurance that Borrower may be able to obtain on its own.

Section 20.9. Fixture Filing. This Security Instrument also constitutes a “fixture filing” pursuant to Section 9-502 of the Illinois Uniform Commercial Code, Illinois Compiled Statutes, Chapter 810 ILCS 5/9-101, et. seq. and shall be filed in the real estate records of the applicable county’s real estate records office.

- (a) Name of Debtor: FASHION OUTLETS OF CHICAGO LLC
- (b) Debtor’s Organizational ID: 4667675.
- (c) Debtor’s Mailing Address: As set forth in the introductory paragraph of this Security Instrument.
- (d) Address of the Property: Set forth on Exhibits A-1 and A-2.
- (e) Debtor is the record owner of the Property (except for the Ground Lease Land, for which Debtor is the lessee for such Ground Lease Land and the Easement Land, for which the Debtor holds an easement interest).
- (f) Debtor’s chief executive office is located in the State of California.
- (g) Debtor’s State of formation is Delaware.
- (h) Debtor is a limited liability company.
- (i) Name of Secured Party: As set forth and defined as “Lender” in the introductory paragraph of this Security Instrument.
- (j) Address of Secured Party: As set forth in the introductory paragraph of this Security Instrument.
- (k) This financing statement covers the Property, and any proceeds or products of such Property.
- (l) Some of the above goods are or are to become fixtures on the Land described herein. Borrower is the record owner of the Land described herein (except for the Ground Lease Land, for which Debtor is the lessee for such Ground Lease Land) upon which the foregoing fixtures and other items and types of property are located set forth on Exhibits A-1 and A-2.

Section 20.10. Receiver. In addition to any provision of this Security Instrument authorizing Lender to take or be placed in possession of the Property, or for the appointment of a receiver as provided for in the Act, Lender shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, as granted and ordered by a court of competent jurisdiction, to be

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placed in possession of the Property or at its request to motion the court to have a receiver appointed, and any such court appointed receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Security Instrument, the right to petition/motion the court for all rights, powers, immunities, and duties as provided for in Sections 15-1702 and 15-1703 of the Act.

Section 20.11. Property Manager. Borrower shall include a “no lien” provision in any agreement hereafter entered into by Borrower with a property manager for the Property (unless such future property manager is not an Affiliate of Borrower, in which case Borrower shall use commercially reasonable efforts to include such “no lien” provision), whereby the property manager waives and releases any and all mechanics’ lien rights that the property manager, or anyone claiming through or under the property manager, may have pursuant to 770 ILCS 60/1. Such property agreement containing such “no lien” provision or a short form thereof shall, at the request of Lender, be recorded with the recorder of the county in which the Property is located, as appropriate.

ARTICLE XXI

PARTICIPATION AND SALE OF LOAN

Section 21.1. Transfers. Lender may sell, transfer or assign all or any portion of its interest or one or more participation interests in the Loan and the Loan Documents at any time and from time to time, including, without limitation, its rights and obligations as servicer of the Loan. Lender may forward to each purchaser, transferee, assignee, servicer, participant, or investor in the Loan (collectively, the “**Investor**”) or any prospective Investor, all documents and information which Lender now has or may hereafter acquire relating to the Loan, Borrower, Guarantor and the Property, whether furnished by Borrower or otherwise, as Lender determines necessary or desirable.

Section 21.2. Participations. Lender, without in any way limiting Lender’s other rights hereunder, in its sole and absolute discretion, shall have the right to divide the Loan into two or more tranches which may be evidenced by two or more notes, which notes may be pari passu or senior/subordinate, provided that (i) the aggregate principal amount of the notes immediately following such division shall equal the outstanding principal balance of the Loan and (ii) the weighted average interest rate of the Loan immediately following such division shall equal the interest rate which was applicable to the Loan immediately prior to such division. Borrower shall cooperate with reasonable requests of Lender in order to divide the Loan and shall execute and deliver such documents as shall reasonably be required by Lender in connection therewith, including, without limitation, new notes to replace the original Note, all in form and substance reasonably satisfactory to Lender, provided that such documents shall contain terms, provisions or clauses (x) no less favorable to Borrower than those contained herein and in the Note, and (y) which do not increase Borrower’s obligations hereunder or decrease Borrower’s rights under the Loan Documents. If Lender redefines the interest rate, the amount of interest payable under the modified notes, in the aggregate, shall at all times equal the amount of interest which would have been payable under the Note at the Interest Rate. In the event Borrower fails to execute and deliver such documents to Lender within ten (10) Business Days following such request by Lender, Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an

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interest, in its name and stead to make and execute all documents necessary or desirable to effect such transactions, Borrower ratifying all that such attorney shall do by virtue thereof.

ARTICLE XXII

GROUND LEASE PROVISIONS

Subject to the exceptions set forth on the Side Letter, Borrower represents and warrants to Lender, as of the date hereof, as follows:

Section 22.1. Ground Lease Provisions. (a) The documents identified in the definition of Ground Lease Documents contain the entire agreement of Ground Lessor and Borrower pertaining to the Ground Lease Land. Except for the Ground Lease Documents, there are no modifications or amendments to any of the Ground Lease Documents, and no such modifications or amendments are contemplated. Borrower has no estate, right or interest in or to the Ground Lease Land except under and pursuant to the Ground Lease Documents. Except for the Ground Lease Documents and the Property Documents, Borrower has no agreements with Ground Lessor or any affiliate thereof pertaining to the real property or improvements which are subject to Ground Lease.

(b) To Borrower's knowledge, the Village of Rosemont, Illinois is (i) the Ground Lessor and the only Person currently holding or controlling all or any part of the landlord's interest in the Ground Lease, and (ii) the exclusive fee simple owner of the Ground Lease Land, subject only to the Ground Lease and items expressly disclosed in Lender's title insurance policy.

(c) The Ground Lease and the Ground Lease Documents are in full force and effect. All conditions and contingencies to the effectiveness of the Ground Lease and the commencement of the regular term thereof have been satisfied. The Ground Lease term has commenced, is in effect, and is scheduled to expire on December 31, 2034. There are no options to extend the term of the Ground Lease.

(d) Intentionally Omitted.

(e) Intentionally Omitted.

(f) Borrower has no right to purchase any interest in any Ground Lease Land except as set forth in the Ground Lease Documents. Borrower and Lender acknowledge that Borrower has delivered to Lender a power of attorney dated as of the date hereof which entitles Lender to exercise the purchase option granted to Borrower in the Ground Lease upon the occurrence of circumstances set forth in more detail in such power of attorney. Borrower may exercise the purchase option granted to Borrower under the Ground Lease and acquire the fee interest in the Ground Lease Land, so long as, prior to Borrower's acquisition of the fee interest in the Ground Lease Land the following conditions are satisfied:

(i) Borrower has delivered to Lender at least thirty (30) days prior written notice of Borrower's intent to acquire the fee interest in the Ground Leased Land;

(ii) Borrower has delivered to Lender a draft of the instrument conveying the fee interest in the Ground Lease Land to Borrower;

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(iii) Lender shall have received search reports reasonably satisfactory to Lender that the Ground Lease Land is not subject to any liens (other than Permitted Exceptions), judgments, tax liens, litigation or other items which are reasonably likely to have a material and adverse effect on the Loan, the Borrower or the Property;

(iv) Lender shall have received certificates of insurance demonstrating insurance coverage in compliance with the terms of this Security Instrument for the Ground Lease Land;

(v) Lender shall have received an updated lender's policy of title insurance insuring the lien of this Security Instrument on the fee interest in the Ground Lease Land, which title insurance policy shall be in a form and substance reasonably acceptable to Lender;

(vi) Lender shall have received an environmental report addressed to Lender and its successors a: d/or assigns reasonably satisfactory to Lender and performed by a reputable environmental engineer reasonably acceptable to Lender disclosing that there are no hazardous substances, underground storage tanks, or other recognized adverse environmental conditions in violation in any material respect of environmental laws located in, on or under the Ground Lease Land;

(vii) Lender shall have received copies of all material permits, licenses and approvals required for Borrower's legal use and occupancy of the Ground Lease Land; and

(viii) Borrower shall have executed such instruments and documents as may be reasonably required by Lender to confirm that the lien of this Security Instrument shall have been spread to the fee interest in the Ground Lease Land.

(g) No Ground Lease Default exists or has occurred as to Borrower's obligations, nor to Borrower's knowledge, does any Ground Lease Default exist as to Ground Lessor's obligations, in each instance which has not been cured. Borrower neither has given nor received any notice, communication or information that a Ground Lease Default exists or has occurred, or that any Person alleges the same to exist or to have occurred, in each instance which has not been cured.

(h) Borrower is the exclusive owner of the tenant's interest under the Ground Lease. Borrower has not assigned, transferred, or encumbered any interest under the Ground Lease, except: (i) as expressly identified in the definition of Ground Lease Documents and (ii) in favor of Lender pursuant to the Loan Documents. There are no material Leases affecting any of the Ground Lease Land other than the Ground Lease.

Section 22.2. No Modification of the Ground Lease. Borrower shall not cause, join in, or suffer to occur any actual or purported modification, amendment, surrender or termination of any of the Ground Lease Documents. Borrower shall have no right or power to modify, amend, terminate, or surrender any of the Ground Lease Documents, in each case without the prior written consent of Lender, which consent may be withheld by Lender in its sole and absolute discretion. Any attempted or purported modification, amendment, surrender or termination of any of the Ground Lease Documents without Lender's prior written consent shall be null and void and of no force or effect.

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Section 22.3. Performance of Ground Lease. Borrower shall fully perform as and when due each and all of its obligations under each Ground Lease Document in accordance with the terms of the applicable Ground Lease Document, and shall not cause or suffer to occur any breach or default in any of such obligations. Except as otherwise set forth herein, Borrower shall keep and maintain the Ground Lease Documents in full force and effect. If Borrower shall receive forbearance from any Ground Lessor or otherwise shall be excused from full and timely performance of any of its obligations under any Ground Lease Documents, the same shall not postpone, excuse, diminish, or otherwise affect the obligations of Borrower under this Section 22.3. Further, notwithstanding that certain of Borrower's obligations under the Loan Documents may be similar or identical to certain of Borrower's obligations under the Ground Lease Documents, all of Borrower's obligations under the Loan Documents are and shall be separate from and in addition to its obligations under the Ground Lease Documents provided, that if there is any conflict in the obligations, the Ground Lease obligations shall prevail, to the extent that such Ground Lease is in effect. If Borrower shall receive notice or information that compliance with any of Borrower's obligations under the Loan Documents on the one hand, or under the Ground Lease Documents on the other, may constitute or give rise to a breach or default under the other of them, then Borrower immediately shall notify Lender in writing of the same. If Lender shall receive any such notice or information, then Lender may (but shall not be obligated to) give written instructions Borrower, in which case Borrower shall comply with such instructions, provided the same does not result in a breach under the subject Ground Lease. Upon Lender's request, Borrower shall submit satisfactory evidence of payment or performance of any of its obligations under the Ground Lease Documents.

Section 22.4. Notice of Default. If Borrower shall receive any notice or information that any Ground Lease Default has occurred or may occur with respect to the Ground Lease, then Borrower immediately shall notify Lender in writing of the same and immediately shall deliver to Lender a true and complete copy of each such notice. Further, Borrower immediately shall provide such documents and information as Lender shall request concerning the Ground Lease Default.

Section 22.5. Lender's Right to Cure. If any Ground Lease Default shall occur, or if Lender reasonably believes that a Ground Lease Default, has occurred or may occur, or if Ground Lessor asserts that a Ground Lease Default has occurred (whether or not Borrower may dispute such assertion), then Lender may (but shall not be obligated to) take any action that Lender deems necessary or desirable, including without limitation (i) performance or attempted performance of any of Borrower's obligations under the applicable Ground Lease Documents, (ii) curing or attempting to cure any actual or purported Ground Lease Default, (iii) mitigating or attempting to mitigate any damages or consequences of the same, and (iv) entry upon the applicable Ground Lease Land for any or all of such purposes. Lender may pay and expend such sums of money as Lender in its sole discretion deems necessary or desirable for any such purpose. Borrower shall reimburse Lender within 10 days after demand for all reasonable costs, expenses and disbursements incurred by Lender under this provision, including reasonable attorneys' fees and expenses, together with interest thereon at the same rate as is then applicable to other principal hereunder.

Section 22.6. Acquisition of New Interests. If the Ground Lease shall be rejected, canceled, or terminated, and if Lender or its nominee thereafter or in connection therewith shall acquire any right, title, interest or estate in or to any Ground Lease Land (which may include without limitation any new lease of the Ground Lease Land) then Borrower shall have no right,

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title, interest or estate in or to such new lease, or the leasehold estate created by such new lease, or any other interest of Lender or its nominee in the Ground Lease Land.

Section 22.7. Legal Action Affecting the Ground Lease or Interests in the Ground Lease Land. Borrower shall not commence any action or proceeding against Ground Lessor or affecting or potentially affecting any Ground Lease Documents or Borrower's or Lender's interest therein or in the Ground Lease Land, without the prior written consent of Lender, which Lender may withhold in its sole and absolute discretion. Borrower shall notify Lender immediately if any action or proceeding shall be commenced between Ground Lessor and Borrower, or affecting or potentially affecting the Ground Lease Documents or Borrower's or Lender's interest therein or in the Ground Lease Land (including, without limitation, any case commenced by or against Ground Lessor under the Bankruptcy Code). Lender shall have the option, exercisable upon notice from Lender to Borrower, to conduct and control any such action or proceeding with counsel of Lender's choice. Lender may proceed in its own name or in the name of Borrower in such action or proceeding, and Borrower shall cooperate with Lender, comply with the instructions of Lender (which may include withdrawal or exclusion of Borrower from such action or proceeding), and execute any and all powers, authorizations, consents or other documents reasonably required by Lender in connection therewith. Borrower shall indemnify and hold harmless Lender from and against any and all claims, costs, expenses, attorneys' fees, losses, and damages suffered or reasonably incurred by Lender in or as a consequence of any such action or proceeding. Borrower shall reimburse Lender within 10 days after demand for all reasonable costs, expenses and disbursements incurred by Lender under this provision, including reasonable attorneys' fees and expenses, together with interest thereon at the same rate as is then applicable to other principal hereunder.

Section 22.8. Estoppel Certificate. Borrower shall use diligent efforts to obtain and deliver to Lender within 30 days after written request by Lender, an estoppel certificate from Ground Lessor setting forth (i) the identities of the original lessor and lessee under the Ground Lease and each of their respective successors, (ii) that the applicable Ground Lease Documents have not been modified or, if any has been modified, the date of each modification (together with copies of each such modification), (iii) the rent payable under the Ground Lease, (iv) the dates to which all rent and other charges have been paid, (v) whether there are any alleged Ground Lease Defaults, and, if so, setting forth the nature thereof in reasonable detail, and (vi) such other matters as Lender may reasonably request. If and to the extent an estoppel certificate was delivered to Lender in connection with the closing of the Loan, Lender agrees that an estoppel in substantially the same form will be acceptable to satisfy these requirements.

Section 22.9. No Assignment. Notwithstanding anything to the contrary, Lender shall have no liability or obligation under the Ground Lease Documents by reason of its acceptance of this Security Instrument and the other Loan Documents.

Section 22.10. Bankruptcy. (a) If Ground Lessor shall reject the Ground Lease under or pursuant to Section 365 of the Bankruptcy Code, Borrower shall not elect to treat such Ground Lease as terminated but shall elect to remain in possession of the Ground Lease Land and the leasehold estate under such Ground Lease. The lien of this Security Instrument does and shall encumber and attach to all of Borrower's rights and remedies at any time arising under or pursuant to Section 365 of the Bankruptcy Code, including without limitation, all of Borrower's rights to remain in possession of the Ground Lease Land and the leasehold estate.

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(b) Borrower acknowledges and agrees that in any Proceeding under the Bankruptcy Code is commenced by or against Borrower, Lender by reason of the liens and rights granted under this Security Instrument and the Loan Documents shall have a substantial and material interest in the treatment and preservation of Borrower's rights and obligations under the Ground Lease, and that, in the Proceeding under the Bankruptcy Code, Borrower shall provide to Lender immediate and continuous adequate protection of such interests. Borrower and Lender agree that such adequate protection shall include but shall not necessarily be limited to the following:

(i) Lender shall be deemed a party to the Ground Lease (but shall not have any obligations thereunder) for purposes of Section 365 of the Code, and shall have standing to appear and act as a party in interest in relation to any matter arising out of or related to the Ground Lease or the Ground Lease Land.

(ii) Borrower shall serve on Lender all notices, pleadings and other documents relating to or affecting the Ground Lease or the Ground Lease Land. Any notice, pleading or document served by Borrower on any other party in the Proceeding under the Bankruptcy Code shall be contemporaneously served by Borrower on Lender, and any notice, pleading or document served upon or received by Borrower from any other party in the Proceeding under the Bankruptcy Code shall be served by Borrower on Lender immediately upon receipt by Borrower.

(iii) Upon written request of Lender, Borrower shall assume the Ground Lease, and shall take such steps as are necessary to preserve Borrower's right to assume such Ground Lease, including without limitation obtaining extensions of time to assume or reject such Ground Lease.

(iv) If Borrower or Ground Lessor seeks to reject the Ground Lease or have the Ground Lease deemed rejected, then prior to the hearing on such rejection, Lender shall be given no less than 20 days' notice and opportunity to elect in lieu of rejection to have such Ground Lease assigned to and assumed by a nominee of Lender. If Lender shall so elect to have such Ground Lease assigned and assumed, then Borrower shall continue any request to reject such Ground Lease until after the motion to assign and assume has been heard. If Lender shall not elect to have such Ground Lease assigned and assumed, or if Lender shall so elect but for any reason such assignment and assumption does not occur, then Lender may obtain in connection with the rejection of such Ground Lease a determination that the Ground Lessor, at Lender's option, shall (a) agree to terminate such Ground Lease and enter into a new lease with Lender on the same terms and conditions as such Ground Lease, for the remaining term of such Ground Lease, or (b) treat such Ground Lease as breached and provide Lender with the rights to cure defaults under such Ground Lease and to assume the rights and benefits of such Ground Lease.

(c) Borrower shall join with and support any request by Lender to grant and approve the foregoing as necessary for adequate protection of Lender's interests. Notwithstanding the foregoing, Lender may seek additional terms and conditions, including such economic and monetary protections as it deems appropriate to adequately protect its interests, and any request for such additional terms or conditions shall not delay or limit Lender's right to receive the specific elements of adequate protection set forth herein.

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Section 22.11. No Lender Liability. Notwithstanding anything contained herein or otherwise to the contrary, Lender shall not have any liability or obligation under the Ground Lease, by virtue of its entering into this Loan Agreement or the other Loan Documents.

Section 22.12. Predecessors, Successors. Where reference herein is made to the rights or obligations of Borrower under the Ground Lease, the same shall refer to all rights and obligations of the original ground lessee and its successors under such Ground Lease, including all of Borrower's predecessors, successors, and assigns in its interest under such Ground Lease. Where reference herein is made to the rights or obligations of any Ground Lessor under the Ground Lease, the same shall refer to all rights and obligations of such original Ground Lessor and its successors under such Ground Lease, including all of the current Ground Lessor's predecessors, successors, and assigns, as applicable, in its interest under the Ground Lease.

[Remainder of page intentionally left blank; signature page follows]

Property of Cook County Clerk's Office

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

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IN WITNESS WHEREOF, Borrower has executed and delivered this Security Instrument as of the date first set forth above.

FASHION OUTLETS OF CHICAGO LLC, a
Delaware limited liability company

By: _____
Name: Scott W. Kingsmore
Title: Chief Financial Officer

ACKNOWLEDGMENT BY NOTARY PUBLIC

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.

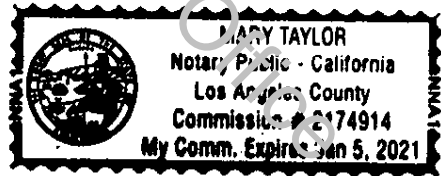
STATE OF CALIFORNIA)
COUNTY OF Los Angeles)

On 12/17/2018, before me, Mary Taylor, NOTARY PUBLIC, personally appeared Scott W. 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 _____ (Seal)
My Commission Expires 1/5/2021



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EXHIBIT A-1 LEGAL DESCRIPTION—FEE LAND

Parcel 1: (Fee)

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.

Property Address: 5220 Fashion Outlets Way, Rosemont, Illinois 60018
Permanent Index Numbers: 12-09-213-032-0000; 12-10-102-016-0000; and 12-10-102-017-0000

Parcel 2: (Leasehold) INTENTIONALLY DELETED

Parcel 3: (Easement)

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 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, filed June 3, 1960 as Document Number LR-1925132, per Deed recorded February 18, 2004 as Document 0404914037, in Cook County, Illinois.

Permanent Index Number: 12-09-213-029-0000

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EXHIBIT A-2

LEGAL DESCRIPTION—GROUND LEASE LAND

Parcel 1: (Fee) INTENTIONALLY DELETED

Parcel 2: (Leasehold)

The leasehold estate created by the instrument herein referred to as the lease, executed by: Village of Rosemont, as Lessor, and Fashion Outlets of Chicago LLC, as Lessee, dated February 22, 2012, 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. 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.

Property Address: 5240 Fashion Outlets Way, Rosemont, Illinois 60018
Permanent Index Numbers: 12-09-213-033-8001; 12-09-213-033-8002; 12-10-102-018-8001; 12-10-102-018-8002; 12-10-102-019-8001; and 12-10-102-019-8002

Parcel 3: INTENTIONALLY DELETED

**COOK COUNTY
RECORDER OF DEEDS**
**COOK COUNTY
RECORDER OF DEEDS**

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EXHIBIT B

DEFINITIONS

“**Acceleration**” is defined in Section 14.2(a)(i).

“**Acceptable LLC**” is defined as a limited liability company formed under Delaware law which has at least one springing member, which, upon the dissolution of all of the members or the withdrawal or the disassociation of all of the members from such limited liability company, shall immediately become the sole member of such limited liability company.

“**Accumulations**” is defined in Section 2.1(vii).

“**Accumulations Depositary**” is defined in Section 6.2(a).

“**Additional Funds**” is defined in Section 7.4(v).

“**Affiliate**” is defined in Section 8.4(c).

“**Annual Financial Statement**” is defined in Section 10.1(a).

“**Anti-Terrorism Laws**” is defined as all Laws relating to terrorist acts, acts of war and money laundering.

“**Assessments**” is defined as all assessments now or hereafter levied, assessed or imposed against the Property.

“**Assignment**” is defined as the Assignment of Leases and Rents, dated of even date with this Security Instrument, made by Borrower for the benefit of Lender.

“**Bankruptcy Code**” means Title 11 of the United States Code.

“**Borrower**” is defined in the introductory paragraph.

“**Borrower Party**” is defined in Section 15.1.

“**Bottom Guaranty**” is defined as each Partial Limited Guaranty of Collection delivered to Lender by certain limited partners in Macerich in the form attached to the Side Letter as Exhibit B.

“**Budget**” is defined in Section 10.3(a).

“**Business Days**” is defined as any day on which commercial banks are not authorized or required by Law to close in New York, New York.

“**Casualty**” is defined as damage to or destruction of the Property by fire or other casualty.

“**Casualty Threshold**” is defined in Section 7.2(b).

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“**CERCLA**” is defined as the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 and by the Small Business Liability Relief and Brownfields Revitalization Act and by the Asset Conservation, Lender Liability and Deposit Insurance Protection Act of 1996, and as further amended from time to time.

“**Code**” is defined as the Internal Revenue Code of 1986, as amended, and the related regulations promulgated thereunder.

“**Condemnation**” is defined as the permanent or temporary taking of all or any portion of the Property, or any interest therein or right accruing thereto, by the exercise of the right of eminent domain (including any transfer in lieu of or in anticipation of the exercise of the right), inverse condemnation or any similar injury or damage to or decrease in the value of the Property, including severance and change in the grade of any streets and a Condemnation will be deemed to have occurred on the date title to the Property taken passes or if the Condemnation is temporary, on the date Borrower no longer has use of the affected property.

“**Condemnation Awards**” is defined in Section 2.1(viii).

“**Condemnation Proceeding**” is defined as a Proceeding that could result in a Condemnation.

“**Condemnation Threshold**” is defined in Section 7.2(b).

“**Control**” when used with respect to any specified Person, and unless expressly defined otherwise with respect to such specified Person, means the possession, directly or indirectly, of the power to direct the management, policies, business and affairs of such Person (including the right at all times to appoint and remove the managers, directors, general partners (if applicable), officers or other representatives of such Person), by reason of the ownership, directly or indirectly, of voting securities in such Person, by contract or otherwise, and the terms “Controlling” and “Controlled” have the meanings correlative to the foregoing. Notwithstanding the foregoing, an entity shall not be deemed to lack Control by virtue of another Person having customary major decision rights as a limited partner or non-managing member under a joint venture agreement or similar arrangements.

“**CPA**” is defined as any of the “Big Four” accounting firms, or an independent certified public accountant reasonably satisfactory to Lender.

“**Debt**” is defined in Section 3.1.

“**Debt Service Coverage**” is defined as Net Operating Income of the Property for any given period divided by the amount of scheduled Debt Service Payments over such period, as determined by Lender. If no period is specified, then Debt Service Coverage will be determined over a twelve (12) month period.

“**Debt Service Payments**” is defined as the monthly installments of principal and interest payable by Borrower to Lender as set forth in the Note.

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“**Debt Yield**” is defined, for any date of determination, as the percentage obtained by dividing the Net Operating Income of the Property for any given period divided by the outstanding principal balance of the Loan. If no period is specified, then Debt Yield will be determined over a trailing twelve (12) month period.

“**Default Interest Rate**” is defined as the lower of (i) the Fixed Interest Rate plus four percent (4%) per annum, or (ii) the Maximum Interest Rate.

“**Destruction Event**” is defined in Section 7.4.

“**Easement Agreement**” is defined as that certain Grant of a Temporary Construction Easement and Access, Loading, Refuse and Utility Easement and Option to Purchase dated February 27, 2012 by The Village of Rosemont in favor of Borrower, recorded on March 6, 2012 as Instrument No. 1200641162.

“**Easement Land**” is the land that is the subject of the Easement Agreement, as described on Exhibit A attached to the Easement Agreement.

“**Environmental Activity**” is defined as any abatement, cleanup, disposal, generation, handling, manufacture, possession, release, remediation, removal, storage, transportation, treatment or use of any Hazardous Material. The presence of any Hazardous Material or the noncompliance with any Environmental Laws, will be deemed Environmental Activity.

“**Environmental Indemnity**” means that certain Environmental Indemnity, dated as of the date hereof, given by Indemnitor in favor of Lender.

“**Environmental Laws**” is defined as all Laws pertaining to health, safety, protection of the environment, natural resources, conservation, wildlife, waste management, Hazardous Materials and pollution, including CERCLA, as amended, the Porter Coogre Water Cleanup Act, the Waste Management Act of 1980, the Toxic Pit Cleanup Act, and the Underground Tank Act of 1984,.

“**Environmental Report**” is defined in the Environmental Indemnity.

“**Equipment Leases**” is defined in Section 13.3.

“**ERISA**” is defined in Section 8.3(a).

“**Event of Default**” is defined in Section 14.1.

“**Excluded Persons**” is defined as (i) owners of shares of stock traded on a public United States regulated stock exchange, (ii) holders of less than twenty percent (20%) of the direct or indirect limited partnership and operating partnership units in The Macerich Partnership, L.P., and (iii) accommodation preferred shareholders in a real estate investment trust, which hold less than twenty percent (20%) of the direct or indirect interests in the Borrower.

“**Executive Order**” is defined in Section 8.4.

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“**Expansion Connection Work**” means the construction of the Expansion Connection in accordance with the plans and specifications approved by Lender and the relocation of Nordstrom from the Nordstrom Rack Space.

“**Expenses**” is defined in Section 11.1(a).

“**Financial Books and Records**” is defined as detailed accounts of the income and expenses of the Property and of Borrower and all other data, records and information that either are specifically referred to in Article X or are necessary to the preparation of any of the statements, reports or certificates required under such Article X and includes all supporting schedules prepared or used by the CPA in issuing its opinion, if applicable.

“**Fiscal Year**” is defined as any calendar year or partial calendar year during the Term.

“**Fixed Interest Rate**” is defined as 4.58% per annum.

“**Fixtures**” is defined as all of the Property that constitutes “fixtures” as defined on the Uniform Commercial Code.

“**General Partner**” is defined as the general partner of Borrower, if any, to the extent Borrower is a limited partnership.

“**Government**” is defined as any federal, state or municipal governmental or quasi-governmental authority including any executive, legislative or judicial branch and any division, subdivision or agency of any of them and any entity to which any of them has delegated authority.

“**Ground Lease**” is defined as the lease described by the Ground Lease Documents.

“**Ground Lease Default**” is defined as any breach or default under the Ground Lease, including, without limitation, any breach or default under any of the Ground Lease Documents (in each case, after giving effect to any notice and cure periods set forth hereunder).

“**Ground Lease Documents**” means, collectively, those documents identified on Exhibit F attached hereto.

“**Ground Lease Land**” is as set forth on Exhibit A-2 attached hereto and made a part hereof.

“**Ground Lessor**” means Village of Rosemont, Illinois, an Illinois municipal corporation.

“**Guarantor**” is defined as Macerich.

“**Guaranty**” means, individually and/or collectively, as the context may require, that certain Guaranty of Borrower’s Recourse Liabilities, dated as of the date hereof, given by Guarantor in favor of Lender.

“**Hazardous Materials**” is defined as (i) any by-product, chemical, compound, contaminant, pollutant, product, substance, waste or other material that is hazardous or toxic, (ii)

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any by-product, chemical, compound, contaminant, pollutant, product, substance, waste or other material, the abatement, cleanup, discharge, disposal, emission, exposure to, generation, handling, manufacture, possession, presence, release, removal, remediation, storage, transportation, treatment or use of which is controlled, prohibited or regulated by any Environmental Laws, including asbestos, petroleum, petroleum products and polychlorinated biphenyls and (iii) mold, mildew, fungi, bacteria, viruses and other microbial matter.

“Imposition Penalty Date” is defined in Section 6.1(a).

“Impositions” is defined as all Taxes, Assessments, ground rent, if any, water and sewer rents, fees and charges, levies, permit, inspection and license fees and other dues, charges or impositions, including all charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, maintenance and similar charges and charges for utility services, in each instance whether now or in the future, directly or indirectly, levied, assessed or imposed on the Property or Borrower and whether levied, assessed or imposed as excise, privilege or property taxes.

“Improvements” is defined in Section 2.1(ii).

“Indemnitor” is defined in the Environmental Indemnity.

“Independent Manager” shall mean a duly appointed member of the board of directors or board of managers who is provided by a nationally-recognized company that provides professional independent directors/managers who shall not have been at the time of initial appointment or at any time while serving as an Independent Manager, and may not have been at any time during the preceding five years (i) a stockholder, policyholder, director, officer, employee, partner, attorney or counsel of Borrower or any affiliate of thereof (other than as an independent director/manager), (ii) a customer, supplier or other Person who derives any of its purchases or revenues from its activities with Borrower, Guarantor or any affiliate of any of them (other than as an independent director/manager), (iii) a Person or other entity controlling or under common control with any such stockholder, policyholder, director, officer, employee, partner, customer, supplier or other Person, or (iv) a member of the immediate family of any such stockholder, policyholder, director, officer, employee, partner, customer, supplier or other Person. As used in this definition, the term **“control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise (excluding control arising by virtue of the subject person having voting rights with respect to Material Actions of an entity, which voting rights derive from such person’s engagement as an independent manager/director). As used in this definition, the term **“affiliate”** shall mean: (1) any person or entity directly or indirectly owning, controlling or holding with power to vote ten percent (10%) or more of the outstanding voting securities or interests of such other person or entity; (2) any person or entity ten percent (10%) or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by such other person or entity; (3) any person or entity directly or indirectly controlling, controlled by or under common control with such other person or entity; (4) any officer, director or partner of such other person or entity (other than as an independent director/manager); (5) if such other person or entity is an officer, director or partner, any company for which such person or entity acts in any

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such capacity (other than as an independent director/manager); and (6) any close relative or spouse of the specified person.

“**Insurance Premiums**” is defined as all present and future premiums and other charges due and payable on policies of fire, rental value and other insurance covering the Property and required pursuant to the provisions of this Security Instrument.

“**Insurance Proceeds**” is defined in Section 2.1(ix).

“**Insurers**” is defined in Section 7.1(c).

“**Interest**” is defined as the fixed interest payable under the Note at the Fixed Interest Rate and any other sums which are deemed to be interest under Law.

“**Investor**” is defined in Section 21.1.

“**Joint Control**” when used with respect to any specified Person, shall mean that a Key Principal and a Qualified Joint Control Party shall have the right to make all or substantially all decisions with respect to such Person.

“**Key Principal**” is defined in Section 12.2(a)(v).

“**Land**” is defined in the Recitals.

“**Late Charge**” is defined in the Note.

“**Law**” is defined as all present and future codes, constitutions, cases, opinions, rules, manuals, regulations, determinations, laws, orders, ordinances, requirements and statutes, as amended, of any Government that affect or that may be interpreted to affect the Property, Borrower or the Loan, including amendments and all guidance documents and publications promulgated thereunder.

“**Leases**” is defined as all present and future leases, subleases, licenses and other agreements for the use and occupancy of the Land and Improvements pursuant to which Borrower is the landlord or lessor thereunder, any related guarantees and any use and occupancy arrangements created pursuant to Section 365(h) of the Bankruptcy Code or otherwise in connection with the commencement or continuation of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar Proceedings, or any assignment for the benefit of creditors, in respect of any tenant or other occupant of the Land and Improvements.

“**Leasing Plan**” is defined in Section 10.3(b).

“**Lender**” is defined in the introductory paragraph.

“**Loan**” is defined in the Recitals.

“**Loan Assumption**” is defined in Section 12.2(a)(vii).

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“**Loan Documents**” is defined as the Note, this Security Instrument, the Assignment, the Guaranty and all documents now or hereafter executed by Borrower or held by Lender relating to the Loan, including all amendments but excluding any indemnities or guaranties delivered in connection with the Loan.

“**MAC**” shall mean The Macerich Company, a Maryland corporation.

“**Macerich**” shall mean The Macerich Partnership, L.P., a Delaware limited partnership.

“**Major Lease**” has the meaning assigned to it under the Assignment.

“**Management Agreement**” means collectively, that certain Management Agreement, dated as of September 1, 2016 between Borrower and Macerich Property Management Company, LLC, a Delaware limited liability company as the same may be further amended or supplemented in accordance with the terms of the Loan Documents.

“**Master Lease Agreement**” means an agreement in form attached to the Side Letter.

“**Material Action**” is defined in Section 13.3.

“**Material Environmental Contamination**” is defined as contamination of the Property with Hazardous Materials (i) that constitutes a violation of one or more Environmental Laws; (ii) for which there is a significant possibility that remediation will be required under Environmental Laws; (iii) that results in a material risk of liability or expense to Lender; or (iv) that diminishes the value of the Property.

“**Maturity Date**” is defined as February 1, 2031.

“**Maximum Interest Rate**” is defined as the maximum rate of interest, if any, permitted by Law as of the date of this Security Instrument to be charged with respect to the Loan.

“**Net Operating Income**” is defined as Rents (on an accrual basis) over any period less Operating Expenses determined on an accrual basis for such period.

“**Nordstrom Rack Space**” means the premises demised to Nordstrom, Inc. (“Nordstrom”) pursuant to that certain Agreement of Lease dated August 11, 2015 by and between Borrower and Nordstrom, as affected by that certain letter agreement dated October 26, 2015 from Macerich Management Company, Inc. to Nordstrom, and as amended by that certain First Amendment of Lease dated July 18, 2016 by and between Nordstrom and Borrower.

“**Note**” is defined in the Recitals.

“**Notices**” is defined in Section 17.1.

“**O&M Plan**” is defined as that certain Asbestos Policy – Operation and Maintenance Plan delivered to Lender in connection with the closing of the Loan.

“**Obligations**” is defined in Section 3.1.

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“Official Records” is defined as the office of the County Recorder of Cook County, Illinois.

“Operating Expenses” is defined as the reasonable, customary expenses incurred by Borrower in the ordinary course of business to unaffiliated third parties (or if affiliated, pursuant to the Management Agreement or equivalent to arm’s length third-party transactions for comparable services) in connection with the management, operation, maintenance or leasing of the Property, including without limitation, Impositions, Insurance Premiums and operating expenses for the Property, ground rent, management fees, landscaping, utilities, cleaning, administration, repairs, and any recurring cost which is associated with the maintenance of the Improvements existing on the date hereof, but shall exclude (i) loan placement fees and Debt Service Payments, (ii) non-cash items such as depreciation or amortization, and (iii) any amounts classified as capital expenditures under GAAP.

“Permitted Alterations” is defined as alterations or renovations to any of the Improvements undertaken in connection with (a) any Restoration for which Lender’s approval has been obtained in accordance with this Agreement if required, (b) as required by any Lease or Property Document approved by Lender (to the extent approval is required under the Loan Documents), or (c) any other alterations or renovations which (i) are made while no Event of Default exists, (ii) do not, in the aggregate with all other alterations or renovations relating to the Property exceed (A) in the event the Sponsor Control Test is satisfied, a cost equal to \$20,000,000.00, or (B) in the event the Sponsor Control Test is not satisfied, a cost of \$7,500,000.00, (iii) will not have a material adverse effect on the Property, Borrower or Borrower’s ability to perform its obligations under the Loan Documents, (iv) except during the pendency of any construction, do not materially and adversely affect (A) any structural component of the Improvements or (B) the exterior of the Property, (v) will be diligently constructed in a good and workmanlike manner, (vi) are not prohibited under the terms of any Major Lease, the Expansion REA or any Property Document, unless consent for such alteration is obtained from the requisite parties, and (vii) will not result in any liens on the Property in violation of the Loan Documents, the Expansion REA or the Property Documents. The Expansion Connection Work, if undertaken in accordance with Section 5.14, is also a Permitted Alteration.

“Permitted Exceptions” is defined as (i) the matters shown in Schedule B, Part 1 and 2 of the title insurance policy insuring the lien of this Security Instrument, (ii) the liens and security interests created by the Loan Documents, (iii) liens, if any, for Taxes and Assessments imposed by any Government which are not yet delinquent, (iv) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion or which do not require Lender’s approval hereunder, (v) Leases permitted by the Loan Documents or to which the Lender has otherwise consented, (vi) the Equipment Leases and the liens arising thereunder, (vii) the Ground Lease and (viii) matters (A) permitted by, or otherwise undertaken in accordance with, the Loan Documents (e.g. ordinary course easements) or (B) to which the Lender has otherwise consented or which pursuant to their terms are not effective unless and until Lender consents thereto (e.g., REA amendments); which Permitted Exceptions, individually or in the aggregate, do not materially and adversely affect the value, operation or use of the Property, Borrower’s ability to repay the Loan, or Lender’s security interest in the Property.

“Permitted Transfers” is defined in Section 12.2(a).

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“**Permitted Use**” is defined as use as a first-class outlets shopping center and uses incidental and complementary thereto and commonly found in similarly situated properties.

“**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“**Personal Property**” is defined as the Property, other than Fixtures, the Land or the Improvements.

“**Policies**” is defined in Section 7.1(b).

“**Potential Monetary Default**” is defined as the occurrence of the event described in Section 14.1(i) prior to such event becoming an Event of Default under Section 14.1.

“**Prepayment Premium**” is defined in the Note.

“**Principal**” is defined as the aggregate stated principal balance of the Note or so much thereof as is outstanding from time to time under the Note.

“**Proceeding**” is defined as a pending or threatened action, claim or litigation before a legal, equitable or administrative tribunal having proper jurisdiction.

“**Proceeds**” is defined in Section 7.2(c).

“**Prohibited Person**” is defined in Section 8.4(o).

“**Property**” is defined in Section 2.1.

“**Property Documents**” is defined in Section 2.1(v).

“**Qualified Joint Control Party**” shall mean a Person that (x) is a Qualified Real Estate Investor or is otherwise approved by Lender in its sole discretion and (y) satisfies Lender’s customary KYC and OFAC approval process.

“**Qualified Joint Venture Investor**” shall mean a bank, investment bank, insurance company, commercial credit corporation, pension plan, pension fund or pension and/or investment advisory firm, mutual fund, government plan, real estate company, investment fund, real estate investment trust, or an institution substantially similar to any of the foregoing, provided that in each case that such Person (x) has total assets (in name or under management) in excess of \$1,500,000,000.00 and capital/statutory surplus or shareholder equity in excess of \$400,000,000.00 (in both cases, exclusive of the Property) and (y) is regularly engaged in the business of owning interests (either directly or through funds under management) in commercial real estate properties.

“**Qualified Manager**” shall mean (i) MAC and/or Macerich or any property management company wholly-owned and Controlled by MAC and/or Macerich, (ii) a Person possessing at least seven (7) years’ experience in owning and operating eight (8) million square feet of retail space in

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at least eight (8) Class A regional shopping centers and/or outlet retail centers (in each case, excluding the Property), which is not the subject of a bankruptcy or similar insolvency proceeding, or (iii) a Person that has been approved by Lender in its sole discretion.

“Qualified Real Estate Investor” shall mean (i) MAC, Macerich and their respective Controlled Affiliates, and/or (ii) a bank, investment bank, insurance company, commercial credit corporation, pension plan, pension fund or pension and/or investment advisory firm, mutual fund, government plan, real estate company, investment fund, real estate investment trust, or an institution substantially similar to any of the foregoing, provided that in each case under this clause (ii) that such Person (x) has total assets (in name or under management) in excess of \$1,500,000,000.00 and capital/statutory surplus or shareholder equity in excess of \$400,000,000.00 (in both cases, exclusive of the Property) and (y) is regularly engaged in the business of owning interests (either directly or through funds under management) in at least eight (8) Class A regional shopping centers and/or outlet retail centers (exclusive of the Property) totaling at least 8,000,000 square feet (including anchor stores). For purposes hereof, a “Controlled Affiliate” of a Person shall mean an entity (i) which is Controlled by such Person (which Control may be exercised jointly with one or more other entities) and (ii) in which such Person owns not less than 50% of the direct or indirect interests.

“Qualified Replacement Guarantor” shall mean each of (i) MAC, (ii) Macerich, (iii) one or more Qualified Real Estate Investors (provided that for purposes hereof, such Person must satisfy the financial tests set forth in the definition of the term “Qualified Real Estate Investor” without regard to any assets under management control), and/or (iv) one or more Qualified Joint Venture Investors (provided that for purposes hereof, such Person must satisfy the financial tests set forth in the definition of the term “Qualified Joint Venture Investor” without regard to any assets under management control), provided, in the case of each of the Persons described in the foregoing clauses (i) through (iv), such Person owns a direct or indirect interest in Borrower and maintains Control (which Control may be exercised jointly with one or more other persons) of Borrower.

“Receiver” is defined as a receiver, custodian, trustee, liquidator or conservator of the Property.

“Remedies” is defined in Section 14.2(a).

“Rent Roll” is defined in the Assignment.

“Rents” is defined as all present and future rents, prepaid rents, percentage, participation or contingent rents, issues, profits, proceeds, parking fees, revenues and other consideration accruing under or in connection with the Leases or otherwise derived from the use and occupancy of the Land or the Improvements, including tenant contributions to expenses, security deposits (if and when forfeited) and royalties, if any, all other fees or payments paid to or for the benefit of Borrower, including liquidated damages after a default under a Lease, any termination, cancellation, modification or other fee or premium payable by a tenant for any reason, the proceeds of any rental insurance and any payments received pursuant to Sections 502(b) or 365 of the Bankruptcy Code or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the

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benefit of creditors, in respect of any tenant or other occupant of the Land or the Improvements and all claims as a creditor in connection with any of the foregoing.

“Required Percentage” shall mean 50%.

“Restoration” is defined as the restoration of the Property after a Destruction Event as nearly as possible to its condition immediately prior to the Destruction Event, in accordance with the plans and specifications, in a first-class workmanlike manner using materials substantially equivalent in quality and character to those used for the original improvements, in accordance with Law and free and clear of all liens, encumbrances or other charges other than this Security Instrument and the Permitted Exceptions.

“Restoration Completion Date” is defined in Section 7.4(viii).

“Restoration Funds” is defined in Section 7.5(b).

“Security Instrument” is defined as this Fee and Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing Statement.

“Side Letter” is defined as that certain side letter dated as of the date hereof, executed and delivered by Borrower to Lender, and relating to certain representations and warranties of Borrower, Guarantor, Manager and/or their affiliates, as the case may be, herein or under any other Loan Document.

“Sponsor Control Test” shall mean that (i) one or more Key Principals retain Control of Borrower (which Control may be in the form of Joint Control with a Qualified Joint Control Party), and (ii) one or more Key Principals continue to own, directly or indirectly, in the aggregate, not less than the Required Percentage of the economic interests in Borrower.

“Taxes” is defined as all present and future real estate taxes or personal property taxes, if any, levied, assessed or imposed against the Property.

“Term” is defined as the scheduled term of this Security Instrument commencing on the date Lender makes the first disbursement of the Loan and terminating on the Maturity Date.

“The Macerich Company” is defined as The Macerich Company, a Maryland corporation.

“Transfer” is defined in Section 12.1(a).

“TRIPRA” is defined in Section 7.1(a)(i).

“Uniform Commercial Code” is defined as the Uniform Commercial Code as in effect from time to time in the jurisdiction where the Land is located or, to the extent required by the Uniform Commercial Code, where the Borrower is located, as applicable.

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EXHIBIT C

RULES OF CONSTRUCTION

(a) References in any Loan Document to numbered Articles or Sections are references to the Articles and Sections of that Loan Document. References in any Loan Document to any numbered or lettered Exhibits or Schedules are references to the Exhibits or Schedules attached to that Loan Document, all of which are incorporated in and constitute a part of that Loan Document. Article, Section, Exhibit and Schedule captions used in any Loan Document are for reference only and do not describe or limit the substance, scope or intent of that Loan Document or the individual Articles, Sections, Exhibits or Schedules of that Loan Document.

(b) The terms “include”, “including” and similar terms are construed as if followed by the phrase “without limitation”.

(c) The terms “Land”, “Improvements”, “Fixtures”, “Personal Property”, “Condemnation Awards”, “Insurance Proceeds” and “Property” are construed as if followed by the phrase “or any part thereof”.

(d) Any agreement by or duty imposed on Borrower in any Loan Document to perform any obligation or to refrain from any act or omission constitutes a covenant running with the ownership or occupancy of the Land and the Improvements, which will bind all parties hereto and their respective successors and assigns, and all lessees, subtenants and assigns of same, and all occupants and subsequent owners of the Property, and will inure to the benefit of Lender and all subsequent holders of the Note and this Security Instrument and includes a covenant by Borrower to cause its partners, members, principals, agents, representatives and employees to perform the obligation or to refrain from the act or omission in accordance with the Loan Documents. Any statement or disclosure contained in any Loan Document about facts or circumstances relating to the Property, Borrower or the Loan constitutes a representation and warranty by Borrower made as of the date of the Loan Document in which the statement or disclosure is contained.

(e) The term “to Borrower’s knowledge” is construed as meaning to the actual present knowledge of Borrower after diligent inquiry.

(f) The singular of any word includes the plural and the plural includes the singular. The use of any gender includes all genders.

(g) The terms “person”, “party” and “entity” include natural persons, firms, partnerships, limited liability companies and partnerships, corporations and any other public or private legal entity.

(h) The term “provisions” includes terms, covenants, conditions, agreements and requirements.

(i) The term “amend” includes modify, supplement, renew, extend, replace or substitute and the term “amendment” includes modification, supplement, renewal, extension, replacement and substitution.

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(j) Reference to any specific Law or to any document or agreement, including the Note, this Security Instrument, any of the other Loan Documents, the Leases, the Expansion REA and the Property Documents includes any future amendments to the Law, document or agreement, as the case may be.

(k) No inference in favor of or against a party with respect to any provision in any Loan Document may be drawn from the fact that the party drafted the Loan Document.

(l) The term "certificate" means the sworn statement of the entity giving the certificate, made by a duly authorized person satisfactory to Lender affirming the truth and accuracy of every statement in the certificate. Any document that is "certified" means the document has been appended to a certificate of the entity certifying the document that affirms the truth and accuracy of everything in the document being certified. In all instances the entity issuing a certificate must be satisfactory to Lender.

(m) Any appointment of Lender as Borrower's attorney-in-fact is irrevocable and coupled with an interest. Lender may appoint a substitute attorney-in-fact. Borrower ratifies all actions taken by the attorney-in-fact but, nevertheless, if Lender requests, Borrower will specifically ratify any action taken by the attorney-in-fact by executing and delivering to the attorney-in-fact or to any entity designated by the attorney-in-fact all documents necessary to effect the ratification.

(n) Any document, instrument or agreement to be delivered by Borrower will be in form and content reasonably satisfactory to Lender, to the extent Lender's approval of the same is required.

(o) All obligations, rights, remedies and waivers contained in the Loan Documents will be construed as being limited only to the extent required to be enforceable under the Law.

(p) The unmodified word "days" means calendar days.

(q) If any payment, obligation or action is required to be made, completed or performed on a given day, and such day is not a Business Day, then such payment, obligation or action shall be required to be made, completed or performed on the next occurring Business Day.

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EXHIBIT D

PROPERTY DOCUMENTS

1. The Easement Agreement
2. Second Amended and Restated Real Estate Purchase Contract and Development Agreement, dated February 22, 2012, by and between Borrower and the Village of Rosemont, Illinois, an Illinois municipal corporation.
3. First Amendment to Second Amended and Restated Real Estate Purchase Contract and Development Agreement, dated September 10, 2014, by and between Borrower and the Village of Rosemont, Illinois, an Illinois municipal corporation.
4. Memorandum of Second Amended and Restated Real Estate Purchase Contract and Development Agreement, by and between Borrower and the Village of Rosemont, Illinois, an Illinois municipal corporation, recorded March 6, 2012, as Instrument No. 1206641160.

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EXHIBIT E

EXPANSION CONNECTION WORK

Additional Covenants Regarding the Expansion Connection Work.

- a. Throughout the construction of the Expansion Connection Work and following completion thereof, the parking to be provided within the Property shall satisfy the requirements of the applicable Leases, Property Documents and applicable Law;
- b. Borrower shall perform the Expansion Connection Work in a good and workmanlike manner in accordance with applicable Law, the Property Documents, the Leases and the plans and specifications delivered to Lender in connection with the Expansion Connection Work;
- c. If there is any material change to the plans and specifications relating to the Expansion Connection Work, Borrower shall promptly deliver to Lender such changed plans and specifications for approval;
- d. During the construction of the Expansion Connection Work, an engineer or architect selected by Lender shall have the right to inspect the construction of the Expansion Connection Work from time to time during the construction of the Expansion Connection Work;
- e. Borrower shall duly pay all invoices, bills and costs incurred in connection with the Expansion Connection Work as and when payable;
- f. Within one hundred twenty (120) days following completion of the Expansion Connection Work, Borrower shall deliver to Lender "as-built" plans and specifications for the Expansion Connection Work; and
- g. Subject to governmental delay, within one hundred twenty (120) days following completion of the Expansion Connection Work, Borrower shall deliver to Lender a final (or temporary) certificate of occupancy for the applicable portion of the Property undergoing the Expansion Connection Work, or the local equivalent (if applicable to the Expansion Connection Work), plus such additional information and documentation as Lender shall reasonably require to confirm the lien-free completion of the Expansion Connection Work.

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EXHIBIT F

GROUND LEASE DOCUMENTS

1. Parking Facility Lease dated February 22, 2012, by and between Borrower, as tenant, and Village of Rosemont, Illinois, as landlord, as evidenced by that certain Memorandum of Lease, dated as of February 22, 2012, and recorded March 6, 2012 in the Cook County, Illinois Recorder's Office as Doc #1206641163.
2. Second Amended and Restated Real Estate Purchase Contract and Development Agreement, dated as of February 22, 2012, by and between Village of Rosemont, an Illinois municipal corporation, as village, and Borrower, as developer, as evidenced by that certain Memorandum of Second Amended and Restated Real Estate Purchase Contract and Development Agreement, dated as of February 22, 2012 and recorded March 6, 2012 in the Cook County, Illinois Recorder's Office as Doc #1206641160, as amended by that certain First Amendment to Second Amended and Restated Real Estate Purchase Contract and Development Agreement, dated September 10, 2014.

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS