

UNOFFICIAL COPY



Doc# 1901045046 Fee \$84.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 01/10/2019 02:00 PM PG: 1 OF 24

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

MetLife Loan No. 703137

Fashion Outlets of Chicago, Rosemont, Illinois

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is made as of January 10, 2019, by FASHION OUTLETS OF CHICAGO LLC, a Delaware limited liability company ("Borrower"), having its principal place of business in care of The Macerich Company, 401 Wilshire Boulevard, Suite 700, Santa Monica, California 90401, for the benefit of METLIFE REAL ESTATE LENDING, LLC, a Delaware limited liability company ("Lender"), having an address at c/o MetLife Real Estate, 125 South Wacker, Suite 100, Chicago, Illinois 60606.

RECITALS:

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

B. To evidence the Loan, Borrower executed and delivered to Lender that certain Promissory Note (the "Note"), dated the date of this Assignment, in the principal amount of Three Hundred Million Dollars (\$300,000,000.00) (those amounts or so much as is outstanding from time to time are referred to collectively as the "Principal"), promising to pay the Principal with interest thereon to the order of Lender as respectively set forth in the Note, until the Debt has been paid in full, with the balance, if any, of the Debt being due and payable on the Maturity Date.

C. Borrower owns certain fee and leasehold interests in the Land (as defined below) together with the improvements located on the Land.

D. Borrower's obligations under the Note are secured among other things by a Fee and Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Mortgage"), dated the date of this Assignment, that encumbers the land (the "Land") described in Exhibit A, the improvements located on the Land and certain other property, rights and interests of Borrower, all as more particularly described in the Mortgage (collectively, the "Property").

COMMONWEALTH LAND TITLE FCHI1800232LI

3 of 6

UNOFFICIAL COPY

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1. Definitions. Capitalized terms used in this Assignment and not specifically defined in this Assignment are defined in Exhibit B of the Mortgage.

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

ARTICLE II

GRANTING CLAUSES

Section 2.1. Assignment.

(a) In consideration of the Debt, Borrower irrevocably, absolutely, presently, unconditionally and not merely as additional security for the payment and performance of the Obligations, sells, assigns, sets over and delivers to Lender the following property, rights, interests and estates now or in the future owned or held by Borrower (the "**Assigned Property**"), for Lender's uses and purposes as set forth in this Assignment, subject to the license granted by Lender to Borrower in this Assignment to collect and receive the Rents until an Event of Default occurs:

(i) all present and future leases, subleases, licenses and other agreements relating to the use and occupancy of the Property pursuant to which Borrower is landlord or lessor including all amendments and modifications to the leases, subleases, licenses and other agreements in existence on the date of this Assignment all of which shall be arms-length and entered into with entities not affiliated with Borrower, excluding, for the avoidance of doubt, the Ground Lease (as defined in the Mortgage) (the "**Leases**");

(ii) the immediate and continuing right to collect and receive all present and future rents, prepaid rents, percentage, participation or contingent rents, issues, profits, proceeds, parking fees, revenues and other consideration under or in connection with the Leases or otherwise derived from the use and occupancy of the Property, including contributions to expenses by present and future tenants, subtenants, licensees and other occupants of the Property (the "**Tenants**"), security deposits (whether in the form of cash deposits, letters of credit or otherwise) and royalties, if any, and all other fees, charges, accounts, accounts receivable or payments paid or payable to or for the benefit of Borrower including liquidated damages following a default under a Lease, any termination, cancellation, modification or other fee or premium payable by a Tenant for any reason; subject to the Mortgage, the proceeds of rental insurance and any payments received in any bankruptcy or similar proceeding as described below (the "**Rents**");

(iii) all present and future guarantees or other credit enhancements given to Borrower in connection with any Tenant's performance under any of the Leases; and

UNOFFICIAL COPY

(iv) all rights or causes of action that Borrower now or hereafter may have against any Tenant.

(b) Borrower further assigns, transfers and sets over to Lender all of Borrower's right, title and interest in and to all payments and claims and rights to the payment of money at any time arising in connection with any rejection or breach of any of the Leases by a Tenant or trustee of the Tenant under Sections 502(b) or 365 of the Bankruptcy Code, including all rights to recover damages arising out of such breach or rejection, all rights to charges payable by the Tenant or trustee in respect of the leased premises following the entry of an order for relief under the Bankruptcy Code in respect of such lessee and all rentals and other charges outstanding under the Lease as of the date of entry of such order for relief and all payments and all claims and rights to the payment of money in connection with the commencement or continuance of any bankruptcy, insolvency, reorganization, arrangement, dissolution, receivership or similar proceedings or assignment for the benefit of creditors relating to any Tenant.

(c) Lender's acceptance of this Assignment, with all of the rights, powers, privileges and authority so created, will not, prior to Lender's entry upon and taking possession of the Property, be deemed to constitute Lender a mortgagee-in-possession, will not obligate Lender to appear in or defend any action or proceeding relating to the Leases or to take any action under this Agreement, to expend any money or incur any expenses under the Leases or this Assignment, to perform or discharge any obligation under the Leases or to assume any obligation for security deposits or other deposits delivered to Borrower by any Tenant and not delivered to Lender and Lender will not be liable for any injury or damage to person or property sustained in or about the Property.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 3.1. Representations, Warranties and Covenants with Respect to Leases.

Subject to Borrower's disclosures to Lender in the Side Letter and in the certification of Rent Roll executed by Borrower and delivered to Lender in connection with the closing of the Loan including the Rent Roll attached thereto, and Lender's approval of such disclosures (which shall be deemed given upon the closing of the Loan):

(a) All of the Leases affecting the Property as of the date of this Assignment (the "**Existing Leases**") are in full force and effect with, to Borrower's knowledge, no defaults or matters that with the passage of time or giving of notice would constitute a default, there are no existing defenses or offsets to the payment of Rent under the Existing Leases; each Existing Lease represents the entire agreement between the parties as to the leasing and to Borrower's knowledge, all of the Existing Leases are enforceable in accordance with their terms.

(b) Each of the Tenants under the Existing Leases is in occupancy, paying Rent, open and conducting business in its respective leased premises and, to Borrower's knowledge is free from bankruptcy, reorganization or other Proceeding for the relief of debtors under any federal or state insolvency statute.

UNOFFICIAL COPY

(c) Borrower has complied with all material obligations and satisfied all material conditions (including any co-tenancy requirements) under the Existing Leases which Borrower as landlord must have complied with or satisfied on or before the date of this Assignment.

(d) Borrower has not collected and will not collect Rents under the Leases, excluding security deposits, percentage rents and other amounts (to the extent the same are subject to reconciliation at a later date) more than one month in advance.

(e) Borrower is the landlord under the Leases, has the authority to assign the Leases and the Rents and there is not and will not be any assignment, pledge or mortgage of the Assigned Property other than this Assignment, except with Lender's prior consent which may be withheld in Lender's sole discretion.

(f) None of the Leases contains (i) an option to purchase the Property (including rights of first or last offer) which option remains outstanding; (ii) any rights of set-off against Rents, except any rights to set-off included in the Lender-approved form lease or which are otherwise customarily negotiated between landlord and tenant and consistent with market terms; or (iii) any early termination or cancellation rights (including those arising from a failure to meet continuing co-tenancy requirements), other than those as may be negotiated between Borrower and the tenant in accordance with customary commercial practices in the retail shopping center context and which are consistent with market terms.

(g) None of the Leases contains obligations of Borrower to make improvements to the Property, including the respective leased premises, to make any payment or give any credit or allowance to tenants or to pay any leasing commissions arising out of the Leases, except for improvement obligations, payments, credit allowances or leasing commissions provided for in the Lender-approved form lease or which may be negotiated between Borrower and the tenant in accordance with customary commercial practices in the retail shopping center context and which are consistent with market terms (including, without limitation, the concessions rights set forth in subclause (f) above), obligations which have been satisfied by Borrower prior to the date of this Assignment or which specifically exclude Lender or any other purchaser in foreclosure from liability for such obligations.

(h) Borrower has not discounted, compromised or discharged and will not discount, compromise or discharge any of Tenants' obligations under the Leases, other than so long as no Event of Default exists, with respect to Non-Major Leases (as hereinafter defined) in circumstances which in Borrower's reasonable business judgment, Borrower believes it to be appropriate.

(i) None of the Leases includes or will include percentage or participation rent that is based on net profit amounts.

(j) Borrower as landlord does not and will not have any obligations under the Leases with respect to off-site improvements.

(k) Intentionally Omitted.

UNOFFICIAL COPY

(l) None of the Tenants has or will have the right to receive or to direct the use of insurance proceeds, except for proceeds of insurance policies in Tenant's name and paid for by Tenant or as may otherwise be customarily negotiated between landlord and tenant and consistent with market terms.

(m) Borrower shall perform the landlord's obligations under the Leases and will enforce the terms of the Leases to be performed by the Tenants.

ARTICLE IV

FUTURE LEASING

Section 4.1. Covenants Regarding Future Leasing.

(a) Borrower shall lease the Property in its reasonable discretion in accordance herewith and may enter into New Leases and may amend, modify, renew or extend Leases without Lender's prior consent if the conditions set out in this Section 4.1(a) are met. For the purposes of this Section 4.1, "New Leases" shall mean, any Lease entered into from and after the date hereof, between a Borrower, as landlord, and a new Tenant at the Property, but shall specifically exclude any short term lease or license agreement for kiosks (regardless of the date entered into) ("Short Term Leases") and/or any amendment, modification, renewal, extension or termination of the same. Borrower's rights to enter into New Leases and/or amend, modify, renew or extend Leases are subject to the following conditions:

(i) there is no Event of Default at the time the New Lease, amendment, modification, renewal or extension is executed;

(ii) the fixed minimum rent and other economic terms (including free rent periods and other tenant concessions) of each New Lease, amendment, modification, renewal or extension are, in Borrower's reasonable business judgment, at prevailing market terms for similar space in properties comparable to the Property in the same geographic location;

(iii) each New Lease is written on a Lender-approved form of lease without material deviation, each renewal or extension is of a Lease written on a Lender-approved form of lease without material deviation and each amendment or modification does not represent a material deviation from a Lender-approved form of lease (with, in each case, changes to the lease form as may be negotiated between Borrower and the tenant in accordance with customary commercial practices in the retail shopping center context and with respect to New Leases, other than material economic changes such as rent relief) or, if not the case, then the New Lease, amendment, modification, renewal or extension, as the case may be, is submitted to Lender together with Lender's form of subordination, non-disturbance and attornment agreement executed by Tenant (subject to changes thereto as may be customarily negotiated between tenants and lenders);

(iv) each New Lease: (A) has a minimum initial term of three (3) years, provided that Borrower may enter into New Leases with initial terms of less than three (3) years with respect to up to 20,000 square feet of space in the aggregate at the Property during any

UNOFFICIAL COPY

calendar year, (B) is for 15,000 square feet or less, (C) represents (a) for so long as the Sponsor Control Test is satisfied, less than three percent (3.0%) of the gross annual revenues or of the net rentable area of the Property, or (b) if the Sponsor Control Test is not satisfied, less than two and one-half percent (2.5%) of the gross annual revenues or of the net rentable area of the Property, and (D) is not to a major department store tenant or other anchor tenant in a retail property;

(v) Lender has not revoked Borrower's privilege of entering into New Leases and amending, modifying, renewing or extending Leases without Lender's consent as provided in Section 4.1(b);

(vi) no lease amendment or modification reduces the initial term of the Lease or any renewal term of the Lease after the renewal has been exercised (provided this restriction shall not apply, so long as no Event of Default exists, to any Non-Major Lease); and

(vii) no lease amendment or modification reduces the Rent except in connection with an extension or renewal of the Lease that complies with the provisions of this Section (provided this restriction shall not apply, so long as no Event of Default exists, to any Non-Major Lease).

If the preceding conditions are not met, Borrower may not enter into any New Lease or any amendment, modification, renewal or extension of a Lease without Lender's prior consent.

(b) After sixty (60) days' prior notice to Borrower, Lender may revoke Borrower's privilege to enter into New Leases and to amend, modify, renew and extend Leases without Lender's prior consent if the Debt Service Coverage for the Property declines below 1.15 for two (2) consecutive quarters, provided, Borrower's privilege shall automatically reinstate if, following such revocation, the Debt Service Coverage for the Property exceeds 1.25 for two (2) consecutive quarters.

(c) Borrower's privilege to enter into New Leases and to amend, modify, renew or extend Leases without Lender's prior consent automatically terminates during the existence of an Event of Default.

(d) Not more than thirty (30) days after execution of each New Lease or amendment, modification, renewal or extension of any Lease that requires Lender's consent, Borrower will deliver to Lender or Lender's designated servicer, a copy certified by Borrower, together with a reasonably detailed lease abstract prepared by Borrower, if such abstract is requested. For New Leases and amendments modifications, renewals or extensions of any Lease that do not require Lender's consent, Borrower shall deliver the foregoing items upon Lender's request.

(e) For the avoidance of doubt, it is acknowledged and agreed that Borrower may enter into, amend, modify, renew, extend, terminate or otherwise administer Short Term Leases, without the prior approval, or consent of, Lender; provided that such amendment, modification, renewal or extension does not convert such lease into a Major Lease (or any other lease for which Lender's prior approval, or consent, is required).

UNOFFICIAL COPY

ARTICLE V

TERMINATION, CANCELLATION OR SURRENDER OF LEASES

Section 5.1. Termination, Cancellation or Surrender of Leases.

(a) Borrower may terminate or cancel any Lease or accept surrender of any leased premises prior to the scheduled expiration date of the Lease in its reasonable discretion and without Lender's prior consent, if the following conditions are met:

- (i) there is no Event of Default at the time of termination, cancellation or surrender;
- (ii) the term of the affected Lease will expire within six months, the tenant is in default under the affected Lease for more than sixty (60) days or Borrower has determined in Borrower's reasonable business judgment that it is economically beneficial to the Property to terminate or cancel the affected Lease and relet the space taking into account the time and costs associated with reletting the space;
- (iii) the affected Lease: (A) is for 15,000 square feet or less, (B) represents (a) for so long as the Sponsor Control Test is satisfied, less than three percent (3.0%) of the gross annual revenues or of the net rentable area of the Property, or (b) if the Sponsor Control Test is not satisfied, less than two and one-half percent (2.5%) of the gross annual revenues or of the net rentable area of the Property, and (C) is not a major department store tenant or other anchor tenant in a retail property (each such Lease satisfying the requirements of this clause (iii) being a "Non-Major Lease"); and
- (iv) Lender has not revoked Borrower's privilege to terminate or cancel Leases and accept surrender of leased premises as provided in Section 5.1(b).

If the preceding conditions are not met, Borrower shall not terminate or cancel any Lease or accept surrender of any leased premises prior to the scheduled expiration date of the Lease without Lender's prior consent.

(b) Upon the occurrence of any of the following and after sixty (60) days' prior notice to Borrower, Lender may revoke Borrower's privilege to terminate or cancel Leases and accept surrender of leased premises without Lender's prior consent, if the Debt Service Coverage for the Property declines below 1.15 for two (2) consecutive quarters, provided, Borrower's privilege shall automatically reinstate if, following such revocation, the Debt Service Coverage for the Property exceeds 1.25 for two (2) consecutive quarters.

(c) Borrower's privilege to terminate or cancel Leases and accept surrender of leased premises without Lender's prior consent automatically terminates during an Event of Default.

(d) If any Lease is terminated or cancelled or leased premises surrendered, Borrower will pay to Lender immediately upon receipt by Borrower any termination, cancellation or surrender fee in an amount of \$1,500,000.00 or more (the "Termination Fee") paid by the Tenant to be applied by Lender to any portion of the Debt as selected by Lender in its sole discretion, except that Lender agrees that, the Termination Fee may be used for tenant

UNOFFICIAL COPY

improvement costs and leasing commissions associated with any new Lease to be entered into by Borrower at the Property, provided that all of the following conditions are met:

- (i) On the date of receipt of the Termination Fee by Borrower, Debt Service Coverage for the Property calculated for the immediately following twelve (12) month period shall be at least 1.15;
- (ii) No Event of Default exists on the date of receipt of the Termination Fee by Borrower;
- (iii) The Termination Fee received by Borrower shall, at Lender's sole option, be paid to Lender and promptly thereafter deposited into a pledge account (the "Pledge Account") pursuant to a pledge and security agreement, reasonably acceptable to Lender and Borrower. Borrower shall assign, transfer and set over to Lender and grant to Lender a first priority security interest under the Uniform Commercial Code in all funds and investments on deposit in the Pledge Account pursuant to the pledge and security agreement. The pledge and security agreement shall be security for the Loan and the payment and performance of all Obligations. At Lender's option, if the Termination Fee is \$1,500,000.00 or greater, Borrower shall provide to Lender, at Borrower's cost and expense, a UCC insurance policy acceptable to Lender insuring such security interest;
- (iv) The funds on deposit in the Pledge Account shall be disbursed to Borrower no more often than once in any one (1) month period, subject to reasonable disbursement conditions (which shall include, without limitation, Lender's receipt of lien waivers for any work performed) to be agreed upon in the pledge and security agreement, and used to pay for tenant improvement costs and leasing commissions actually paid by Borrower (as evidenced by invoices, cancelled checks and/or other evidence reasonably acceptable to Lender). If a balance remains in the Pledge Account after payment of all such tenant improvement costs and leasing commissions, then any such remaining funds shall, so long as there is no default under the Loan, be released to Borrower; and
- (v) The Lease with respect to the leased premises for which such Termination Fee is to be applied shall be entered into in compliance with the terms and conditions of the Loan Documents and Borrower shall deliver to Lender or Lender's designated servicer, within ten (10) days of its execution, a copy of such executed Lease certified by Borrower.

Notwithstanding the foregoing, if an Event of Default occurs at any time during the period that the funds represented by the Termination Fee are on deposit in the Pledge Account, then, in such event, any such remaining funds in the Pledge Account shall, at the option of Lender, be paid to Lender to be applied against the Debt, without payment of any prepayment premium or charge. Lender may commingle the deposits in the Pledge Account with other funds of Lender. Lender shall pay interest on the deposits in the Pledge 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

UNOFFICIAL COPY

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

ARTICLE VI

REPORTING

Section 6.1. Reporting.

(a) Contemporaneously with the delivery to Lender of the Annual Financial Statement under the terms of the Mortgage, Borrower shall deliver the following:

(i) The Annual Certification of Rent Roll executed by Borrower, or the manager of the Property, as agent of Borrower, in the form attached hereto in **Exhibit B**, without any material deviation or exception, unless otherwise approved by Lender.

(ii) A current rent roll of the Property (the "**Rent Roll**"), to be attached to the Annual Certification of Rent Roll, which shall include, without limitation all information described in footnote #1 of Exhibit B, and stating any amendments or modifications to Leases granting rent relief to the subject tenants.

(iii) A current report detailing co-tenancy requirements, Tenant exclusives, termination rights and "kick-out" provisions included within Leases in effect as of the date of such report.

ARTICLE VII

LICENSE TO COLLECT, AND APPLICATION OF, RENTS

Section 7.1. License to Collect Rents.

(a) Lender grants to Borrower a license to administer the Leases and to collect the Rents as they become due under the Leases, receiving and holding the Rents as a trust fund for the benefit of Lender.

(b) Borrower shall apply the Rents in the following order of priority (i) the payment of Impositions; (ii) the payment of Insurance Premiums; (iii) the payment of the reasonable and customary costs of operating, maintaining and leasing the Property as required by the Loan Documents (other than fees and commissions payable to Borrower or Borrower's Affiliates); (iv) the payment of Debt Service Payments and other payments required under the Loan Documents; (v) the payment of reasonable and customary fees and commissions to Borrower and Borrower's Affiliates in connection with operating, maintaining and leasing the Property; and (vi) maintenance of cash reserves adequate to meet the projected costs of operating, maintaining and leasing the Property from time to time in accordance with its Permitted Use, including projected leasing costs, tenant improvement costs, capital expenditures and reserves for replacements, before using any of the Rents for any other purpose.

UNOFFICIAL COPY

(c) During the existence of an Event of Default, Borrower's license to administer the Leases and to collect the Rents will terminate automatically, without any action required of Lender. If Borrower nevertheless collects any Rents after the license terminates, Borrower nevertheless will hold such Rents as a trust fund for the benefit of Lender and will apply such Rents only to the payments described in clauses (i) - (iv) in the preceding subsection. Upon the cure of an Event of Default, and provided no other Event of Default is then continuing under the Loan Documents, the license granted to Borrower under Section 7.1 hereof shall be automatically reinstated.

ARTICLE VIII

DEFAULTS AND REMEDIES

Section 8.1 Events of Default. It is an Event of Default under this Assignment if:

- (i) Borrower fails to pay any amount due, as and when required, under any Loan Document and the failure continues for a period of five (5) days;
- (ii) there is a default in the performance of any other provision of any Loan Document or if there is any inaccuracy or falsehood in any material respect in any representation or warranty contained in any Loan Document which is not remedied within thirty (30) days after Borrower receives notice thereof, provided that if the 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 one hundred twenty (120) days after the notice to Borrower; and
- (iii) an Event of Default occurs under any other Loan Document.

Section 8.2 Remedies. (a) If an Event of Default occurs, Lender may take any of the following actions (the "Assignment Remedies") without notice to Borrower:

- (i) exercise any of the Remedies; and
- (ii) directly or through a Receiver or as a mortgagee-in-possession as authorized by the court:
 - (A) take possession and control of the Property;
 - (B) manage and operate the Property;
 - (C) redevelop or reconfigure the Property and retain consultants or other professional advisors in connection therewith;
 - (D) market the Property for sale and sell or otherwise dispose of the Property;

UNOFFICIAL COPY

(E) require Borrower to deliver to Lender or the Receiver all security deposits, all books and records relating to the Property and Borrower and all original counterparts of the Leases;

(F) collect, sue for and give receipts for the Rents and, after paying all expenses of collection, including a Receiver's fee and expenses, any broker's fees and commissions, and any attorneys' fees (including expert fees, disbursements and costs) apply the net collections to the operation, management and leasing of the Property and thereafter as provided in the Loan Documents;

(G) make, modify, enforce, terminate or accept surrender of Leases and evict tenants;

(H) appear in and defend any Proceeding brought in connection with the Assigned Property and bring any Proceeding, in the name and on behalf of Borrower, that Lender, in its sole discretion, determines should be brought to protect the Assigned Property or Lender's interest in the Assigned Property;

(I) perform any act in the place of Borrower that Lender or the Receiver deems necessary to preserve the value, marketability or rentability of the Property, to increase the gross receipts from the Property or to protect Lender's interest in the Property; and

(J) take any other action with respect to the Assigned Property as Lender may deem necessary to preserve or realize upon Lender's interest in the Assigned Property.

Section 8.3. General Provisions Pertaining to Remedies.

(a) The Assignment 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 Assignment Remedies.

(c) If Lender exercises any of the Assignment Remedies, Lender will not be deemed a mortgagee-in-possession.

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

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

UNOFFICIAL COPY

(f) If an Event of Default occurs, Lender's or a Receiver'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 or a Receiver's acceptance of partial payment will not extend or affect any grace period or constitute a waiver of a default or Event of Default but will be credited against the unpaid Debt.

(h) If Lender or a Receiver exercises any of the Assignment Remedies, such action will not cure or waive any default, will not waive, modify or affect any notice of default under the Loan Documents and will not invalidate any act done pursuant to a notice of default under the Loan Documents. Once Lender exercises the Assignment Remedies, Lender's enforcement will continue for so long as Lender elects, notwithstanding that the collection and application of the Rents may have cured the original default. If Lender elects to discontinue the exercise of the Assignment Remedies, the Assignment Remedies may be reasserted at any time and from time to time following a subsequent Event of Default.

(i) A demand by Lender or the receiver on any Tenant to pay the Rents to Lender or the receiver by reason of an Event of Default will be sufficient notice to the Tenant to make future payments of Rents to Lender or the receiver without the necessity for consent by Borrower.

Section 8.4. Payment of Expenses.

(a) Borrower shall pay all expenses incurred by Lender or the Receiver or that are otherwise payable in connection with this Assignment or the Leases, the Rents or any other Assigned Property, including expenses relating to (i) any Proceeding or other claim asserted against Lender and (ii) the preservation of Lender's security and the exercise of any Assignment Remedies.

Section 8.5. Duty to Defend. If Lender or any of its trustees, officers, participants, employees or affiliates is a party in any Proceeding relating to this Assignment or the Leases and the Rents, Borrower shall defend and hold harmless the party with attorneys and other professionals retained by Borrower and approved by Lender. At its option, Lender may engage its own attorneys and other professionals, at Borrower's expense, to defend or assist the party. In either event, the Proceeding will be controlled by Lender.

Section 8.6. Attorney-In-Fact. Borrower appoints Lender as Borrower's attorney-in-fact to perform, at Lender's election, any actions and to execute and record any instruments necessary to effectuate the actions described in this Article, in each instance only at Lender's election and only to the extent Borrower has failed to comply with the provisions of this Article during an Event of Default or, if no Event of Default exists, within ten (10) Business Days of Lender's request. Such appointment is coupled with an interest and is irrevocable so long as any Obligation remains outstanding.

UNOFFICIAL COPY

ARTICLE IX

LIMITATION OF LIABILITY

This Assignment is subject to the limitations on liability set forth in the Article of the Mortgage entitled "Limitation of Liability".

ARTICLE X

MISCELLANEOUS

Section 10.1. Further Assurances. Borrower shall execute, acknowledge and deliver to Lender, a Receiver or any other entity Lender designates, any additional or replacement documents and perform any additional actions that Lender or the Receiver determines are reasonably necessary to evidence, perfect or protect Lender's interest in the Assigned Property or to carry out the intent or facilitate the performance of the provisions of this Assignment, provided the same do not diminish any of the rights or increase the obligations of Borrower, Guarantor or any Affiliate of Borrower or Guarantor under the Loan Documents.

Section 10.2. Bankruptcy Proceeding Provisions.

(a) If Borrower receives on account of any Proceeding including any Proceeding under the Bankruptcy Code, any sums relating to the breach or rejection of any of the Leases by a Tenant or trustee of such Tenant under Section 365 of the Bankruptcy Code, including all damages arising out of such breach or rejection, all rights to charges payable by the Tenant or trustee in respect of the leased premises following the entry of an order for relief under the Bankruptcy code in respect of the Tenant and all rentals and other charges outstanding under the Lease as of the date of entry of such order for relief, Borrower shall promptly deposit such sums in a segregated account (the "Account") with a depository and will cause the Account to be designated on the records of such depository as collateral for the payment and performance of the Debt. Borrower hereby assigns, transfers and sets over to Lender, and grants to Lender a security interest in, all sums in the Account in consideration of the payment and performance of the Debt. Borrower shall not withdraw any sums from or further encumber the Account without the Lender's prior consent so long as the Debt remains outstanding, provided that if no Event of Default occurs, the Account will be promptly released to Borrower free of the lien and security interest granted hereby on the date on which Borrower enters into a New Lease of the leased premises with a tenant and on terms and conditions satisfactory to Lender.

(b) Any proof of claim or similar document filed by the Lender in connection with the breach or rejection of any of the Leases by any lessee thereunder or trustee of any such lessee under Section 365 of the Bankruptcy Code, 11 U.S.C. §365, will for the purpose of perfecting the Lender's rights conferred in Section 2.1 be deemed to constitute a petition by Lender against Borrower for sequestration of rents under the laws of the State or Commonwealth where the Property is located.

Section 10.3. Assignment Terminates Upon Payment in Full. Upon payment and performance in full of the Obligations, this Assignment will terminate, but the affidavit,

UNOFFICIAL COPY

certificate, letter or statement of any officer of Lender showing any part of the Debt to be unpaid will be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person, firm or corporation, may and is hereby authorized to rely thereon.

Section 10.4. No Further Assignment. Borrower shall not, for collateral or security purposes, further assign or otherwise transfer or encumber its interest in the Assigned Property without Lender's prior consent which may be withheld in Lender's sole discretion (other than with respect to Equipment Leases as permitted by the Mortgage). If Lender consents to any further assignment, transfer or encumbrance of the Assigned Property, it will only do so provided that (i) the subordinate assignment restricts the subordinate assignee from subordinating the Leases to any mortgage or other security instrument held by the subordinate assignee and requires the subordinate assignee to subordinate its interests to any Leases executed after the date of the subordinate assignment; (ii) the subordinate assignment prohibits the subordinate assignee from taking any action that would terminate, modify or amend or could result in the termination, modification or amendment of any of the Leases; and (iii) the subordinate assignee agrees that if it exercises its remedies under its assignment and either it or any party acting on its behalf collects any Rents, such Rents will be deemed collected for the benefit of Lender and held in trust for Lender and upon written demand, the party holding the Rents collected will immediately pay them to Lender. If any subordinate assignment does not contain the foregoing provisions, to the extent permitted by Law, the subordinate assignee will be deemed bound by such provisions as if set forth in the subordinate assignment or any action taken by subordinate assignee that violates the foregoing provisions will be null and void.

Section 10.5. Applicable Law. The Assignment will be governed by and construed in accordance with the Laws of the State or Commonwealth where the Property is located.

Section 10.6. Mortgage Provisions Incorporated. The provisions of the Articles of the Mortgage entitled, "Waivers", "Notices" and "Miscellaneous" are applicable to this Assignment and are deemed incorporated by reference as if set forth at length.

Section 10.7. Covenants Run with the Land. The terms, covenants, conditions and warranties contained in this Assignment and the powers granted hereby will run with the Land, will inure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, successors and assigns, and all lessees, sub-tenants and assigns of same, and all subsequent owners of the Property, and all subsequent holders of the Loan Documents.

Section 10.8. Exculpation. Notwithstanding anything appearing to the contrary in this Assignment, no direct or indirect partner, member or shareholder of Borrower (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 the performance of the obligations of Borrower arising under this Assignment, provided, the foregoing shall not be construed as a limitation of Lender's rights and remedies under any guaranty or indemnity executed and delivered by Guarantor (as defined in the Mortgage) in connection with the Loan.

Section 10.9. Illinois State Specific Provisions.

UNOFFICIAL COPY

(a) Inconsistencies; Conflicts. In the event of any inconsistencies and/or conflicts between the terms and conditions of this Section 10.9 and the other provisions of this Assignment, the terms and conditions of this Section 10.9 shall control and be binding.

(b) Receiver. Upon the occurrence and during the continuance of an Event of Default, Lender, upon application to a court of competent jurisdiction, shall be entitled in accordance with the provisions of the Illinois Mortgage Foreclosure Act, as a matter of strict right, without notice and without regard to the occupancy or value of any security for the indebtedness, or the insolvency of any party bound for its payment, to the appointment of a receiver to take possession of, and to operate, the Property, and to collect and apply the rents, issues, profits, revenues, awards and other benefits thereof. The receiver shall have all rights and powers to the fullest extent permitted by applicable Laws. Borrower shall pay to Lender, upon demand, all of Lender's reasonable, out-of-pocket costs and expenses, including, without limitation, receiver's fees and expenses and reasonable attorneys' fees and expenses, incurred pursuant to this Section, plus interest thereon at the Default Interest Rate, and all such amounts shall be additional indebtedness secured hereby.

(c) Lender's Right to Possession. Upon the occurrence and during the continuance of an Event of Default, and subject to the requirements of 735 ILCS 5/1701(b)(2), Lender shall be entitled to be placed in possession of the Property and to exercise the rights and powers of a mortgagee in possession under the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 et seq. (the "Act").

(d) Business Loan Recital/Statutory Exemption.

(i) Borrower acknowledges and agrees that (A) the proceeds of the Loan will be used in conformance with subparagraph (1)(1) of Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1879, as amended (815 ILCS 105/4(1)(1)); (B) the Loan secured hereby has been incurred by Borrower solely for business purposes of Borrower and for Borrower's investment or profit, as contemplated by said Section 4; (C) the Loan secured hereby constitutes a Loan secured by real estate within the purview of and as contemplated by said Section 4; and (D) the secured Loan is an exempted transaction under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 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.

(ii) Without limiting the generality of anything contained herein, Borrower acknowledges and agrees that the transaction of which this Assignment is a part is a transaction which does not include either agricultural real estate (as defined in 735 ILCS 5/15-1201 (1992)) or residential real estate (as defined in 735 5/15-1219 (1992)).

(e) Collateral Protection Act. Pursuant to the requirements of the Illinois Collateral Protection Act, Borrower is hereby notified as follows: Unless Borrower provides Lender with evidence of the insurance coverage as and when required by the Mortgage (subject to any notice and cure period provided in the Mortgage), Lender may purchase insurance at Borrower's expense to protect Lender's interest in the Property or any other collateral for the Loan or

UNOFFICIAL COPY

Obligations. 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 Loan or Obligations. Borrower may later cancel any insurance purchased by Lender but only after providing Lender with evidence that Borrower has obtained insurance as required by the Mortgage. If Lender purchases insurance for the Property or any other collateral for the Loan or Obligations, Borrower will be responsible for the out-of-pocket costs of that insurance, including interest on such costs until paid in full by Borrower at the rate specified in the Mortgage to the extent that Lender may lawfully impose such interest in connection with the placement of the insurance. The costs of the insurance may be more than the cost of insurance that Borrower may be able to obtain on its own.

(f) Stated Maturity Date. The last of the Loan matures and is due and payable, in full, on February 1, 2031.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

COOK COUNTY
RECORDER OF DEEDS

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

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)

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: (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;

UNOFFICIAL COPY

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

Property of Cook County Clerk's Office

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

UNOFFICIAL COPY

EXHIBIT B

ANNUAL CERTIFICATION OF RENT ROLL

Dated: _____

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

Re: MetLife Loan #703137
 Property known as Fashion Outlets of Chicago, Rosemont, Illinois (the "Property")

Ladies and Gentlemen:

1. Pursuant to the documents evidencing and securing the captioned loan (the "Loan Documents"), Fashion Outlets of Chicago LLC, a Delaware limited liability company ("Borrower") certifies to MetLife Real Estate Lending, LLC ("Lender"), as follows:

(a) The rent roll attached as Schedule A and made a part of this certification reflects the primary economic terms of all existing leases affecting the Property (the "Leases") and all other subleases, licenses or other agreements (the "Other Agreements") affecting the Property, in all material respects.

(b) To the best knowledge of the undersigned, there are no persons or entities in occupancy of all or any portion of the Property except pursuant to the Leases and the Other Agreements.

(c) Attached as Schedule B-1 is a report identifying the renewal options of certain tenants of the Property pursuant to the terms of their Leases; attached as Schedule B-2 is a report identifying the rights of certain tenants of the Property to co-tenancy at the Property pursuant to the terms of their Leases; attached as Schedule B-3 is a report identifying the sales termination rights of tenants of the Property pursuant to the terms of their Leases; attached as Schedule B-4 is an accounts receivable aging report; and attached as Schedule B-5 is a report identifying the radius restrictions, exclusive and restricted uses and permitted uses affecting tenants of the Property pursuant to the terms of their Leases. As used herein, the term "Additional Reports" shall mean, collectively, each of the foregoing reports. To

¹ The attached rent roll should detail the following information for each lease: Name of tenant (including d/b/a), date of lease, square footage, fixed annual or monthly rental and all fixed escalations, additional and percentage rent, security deposit, commencement date, expiration date, any renewal or extension options, the then current aggregate annual rentals generated by all signed Leases and the aggregate square footage of the Property that is leased and occupied, and a statement whether any amendments or modifications to the lease granted rent relief to the subject tenant.

UNOFFICIAL COPY

Borrower's Knowledge (as defined below), each of the Additional Reports is true, correct and complete in all material respects as of the date of this certification.

2. With respect to the Leases and except as set forth in any of the Additional Reports or on Schedule C, Borrower further certifies to Lender as follows:

(a) Except for those leases approved by Lender in writing, the Leases executed by Borrower and Tenant subsequent to the later of the date the Loan closed or the date of last Annual Certification of Rent Roll delivered to Lender, but excluding any short term kiosk lease or license agreement (regardless of the date entered into), and/or any amendment, modification, renewal, extension or termination of the same (the "New Leases"), did not require Lender's prior consent because (i) on the date of execution of each New Lease, no Event of Default existed under the Loan Documents; (ii) each New Lease was written on the lease form approved by Lender without material deviation (with changes to the lease form as may be negotiated between Borrower and the tenant in accordance with customary commercial practices in the retail shopping center context and with respect to New Leases, other than material economic changes such as rent relief) or if non-conforming, was accompanied by a Subordination, Non-Disturbance and Attornment Agreement signed by tenant and on the form approved by Lender (subject to changes thereto as may be customarily negotiated between tenants and lenders); (iii) at the time of execution of each New Lease, the New Lease was in Borrower's reasonable business judgment at prevailing market terms for similar space in properties comparable to the Property in the same geographic market; and (iv) each New Lease (A) is for a minimum initial term of three (3) years, provided that Borrower may enter into New Leases with initial terms of less than three (3) years with respect to up to 20,000 square feet of space in the aggregate at the Property during any calendar year, (B) is for 15,000 square feet or less, (C) represents for so long as the Sponsor Control Test is satisfied, less than three percent (3.0%) of the gross annual revenues or of the net rentable area of the Property/if the Sponsor Control Test is not satisfied, two and one-half percent (2.5%) of the gross annual revenues or of the net rentable area of the Property, and (D) is not to a major department store tenant or other anchor tenant in a retail property.

(b) None of the New Leases contains obligations of Borrower to make any improvements to the Property, including to the respective leased premises to make any payment or give any credit or allowance to tenants or to pay any leasing commissions arising out of the New Leases, except for such obligations (i) provided for in the Lender-approved form lease (with changes to the lease form as may be negotiated between Borrower and the tenant in accordance with customary commercial practices in the retail shopping center context and with respect to New Leases, other than material economic changes such as rent relief); (ii) which Borrower has satisfied prior to the date of this certification; (iii) arising prior to commencement or during the first twelve (12) months of the term of the Lease; or (iv) which specifically exclude Lender or any other purchaser in foreclosure from liability for such obligations.

(c) None of the New Leases contains (i) an option to purchase all or any portion of or interest in the Property (including rights of first or last offer), (ii) any unique early termination or cancellation rights which are non-customary and inconsistent with market standards (including those arising from a failure to meet continuing co-tenancy requirements), but specifically excluding any termination or cancellation rights which are included in

UNOFFICIAL COPY

Borrower's standard form lease for the Property or which relate to condemnation or casualty with respect to the demised premises.

(d) None of the New Leases limits the type or identity of tenant to whom the landlord is permitted to lease and does not limit the use to which another tenant may put its space except for limitations on use generally affecting all tenants at the Property.

(e) None of the tenants under the New Leases has the right to receive or direct the use of proceeds of insurance except for proceeds of tenant's own insurance or to receive or direct the use of condemnation awards except for moving expenses and tenant fixture costs.

(f) Borrower has no obligations under the New Leases with respect to off-site improvements.

(g) Each of the Leases is in full force and effect; to Borrower's Knowledge, there is no default under any Lease for leases premises in excess of 15,000 square feet (each, a "Major Lease"), each of the Leases (as amended, modified, supplemented or assigned in accordance with the Loan Documents) represents the entire agreement between the parties as to the leasing and Borrower has not released, discounted or discharged the tenant from any obligation under the Lease except in accordance with the Loan Documents; and to Borrower's Knowledge, all of the Leases are enforceable in accordance with their terms.

(h) Borrower has not amended or modified any of the Leases except as expressly permitted under the Loan Documents.

(i) Each of the tenants under the Leases is in occupancy, open and conducting business in its leased premises, each of the tenants under a Major Lease is paying rent, and, to Borrower's Knowledge, each of the tenants under a Major Lease is free from pending bankruptcy and from reorganization.

(j) Borrower has not collected rents under the Leases, excluding security deposits, percentage rents and other amounts (to the extent the same are subject to reconciliation at a later date) more than one month in advance.

(k) None of the Leases includes percentage or participation rent that is based on net profit amounts.

(l) Borrower has not otherwise assigned the Leases and rents under the Leases.

(m) To the best knowledge of the undersigned, (i) none of the tenants under the Leases have filed suit against Borrower which remains active, and (ii) no action, suit or proceeding has been filed by Borrower against any tenant under a Major Lease that would reasonably be expected to result in termination of such Major Lease or the removal of such tenant. To Borrower's Knowledge, there is no pending action, suit or proceeding against any tenant under a Major Lease that would result in termination of such Major Lease or removal of such tenant.

UNOFFICIAL COPY

3. As used in this certificate, the term "Borrower's Knowledge" shall mean the actual present knowledge of Borrower.

4. Delivery to Lender of this Certification and accompanying schedules will not be deemed approval of such matters by Lender and will not affect or impair Lender's rights to exercise its remedies under the Loan Documents if any of the matters set forth herein violate any terms or covenants of the Loan Documents.

5. This Annual Certification of Rent Roll is subject to the limitations on liability set forth in the Article of the Mortgage entitled "**Limitation on Liability**".

[Remainder of page intentionally left blank.]

Property of Cook County Clerk's Office

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

UNOFFICIAL COPY

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

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

Sworn to and Subscribed before me
this ____ day of _____, 20____.

Notary Public

Property of Cook County Clerk's Office
COOK COUNTY
RECORDER OF DEEDS