



2414502323

Doc# 2414502323 Fee \$181.00

ILRHSP FEE:\$18.00 RPRF FEE:\$1.00

BLANKET FEE:\$75.00

CEDRIC GILES

COOK COUNTY CLERK'S OFFICE

DATE: 5/24/2024 4:03 PM

PAGE: 1 OF 12

PREPARED BY AND RETURN
TO AFTER RECORDING:

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Bartko Zankel Bunzel & Miller
One Embarcadero Center, 8th Floor
San Francisco, CA 94111

**SUBORDINATION, NONDISTURBANCE
AND ATTORNMENT AGREEMENT**

**NOTICE: THIS SUBORDINATION, NONDISTURBANCE AND
ATTORNMENT AGREEMENT RESULTS IN YOUR LEASEHOLD
ESTATE IN THE PROPERTY BECOMING SUBJECT TO AND OF
LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR
LATER SECURITY INSTRUMENT.**

DEFINED TERMS

Execution Date: As of <u>March 9th</u> , 2024
Lender & Address: MetLife Real Estate Lending, LLC c/o MetLife Real Estate 125 South Wacker, Ste. 100 Chicago, IL 60606 Attn: Director – Loan Production Re: Fashion Outlets of Chicago – Loan #703137
with a copy to: Dechert LLP Cira Centre 2929 Arch Street Philadelphia, PA 19104 Attn: Matthew B. Ginsburg
Tenant & Address: Ulta Salon, Cosmetics & Fragrance, Inc. 1000 Remington Boulevard, Suite 120 Bolingbrook, IL 60440 Attn: Real Estate Legal Department
Landlord & Address: Fashion Outlets of Chicago LLC, a Delaware limited liability company

6706.613

Fashion Outlets, Rosemont, IL
Store No. 1805

6706.613/1953230.1 613/1895468.1

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c/o The Macerich Company
401 Wilshire Boulevard, Suite 700
Santa Monica, California 90401

c/o Macerich
401 Wilshire Boulevard, Suite 700
Santa Monica, California 90401
Attention: Jennifer Jensen

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:

O'Melveny & Myers
400 S. Hope Street, 18th Floor
Los Angeles, California 90071
Attention: Michael D. Hamilton
Email: Mhamilton@omm.com

Loan: A first mortgage loan in the original principal amount of \$300,000,000.00 from Lender to Landlord.

Note: A Promissory Note executed by Landlord to Lender in the amount of the Loan dated as of January 10, 2019.

Security Instrument: A Fee and Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of January 10, 2019, executed by Landlord to Lender securing repayment of the Note. The Security Instrument was recorded on January 10, 2019, as Document No. 1901045044 in Cook County Recorder of Deeds in which the Property is located.

Lease and Lease Date: That certain Shopping Center Lease entered into by Landlord and Tenant dated as of October 31, 2023 covering the Premises.

Property: Fashion Outlets of Chicago
5220 Fashion Outlets Way
Rosemont, IL 60018-4811

The Property is more particularly described on Exhibit A.

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THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**") is made by and among Tenant, Landlord, and Lender and affects the Property described in Exhibit A. Certain terms used in this Agreement are defined in the Defined Terms. This Agreement is entered into as of the Execution Date with reference to the following facts:

A. Landlord and Tenant have entered into the Lease covering certain space in the improvements located in and upon the Property (the "**Premises**").

B. Lender has made or is making the Loan to Landlord evidenced by the Note. The Note is secured, among other documents, by the Security Instrument.

C. Landlord, Tenant and Lender all wish to subordinate the Lease to the lien of the Security Instrument.

D. Tenant has requested that Lender agree not to disturb Tenant's rights in the Premises and use of the Common Area (as defined in the Lease) pursuant to the Lease in the event Lender forecloses the Security Instrument, or acquires the Property pursuant to the power of sale contained in the Security Instrument or receives a transfer of the Property by a conveyance in lieu of foreclosure of the Property (collectively, a "**Foreclosure Sale**") but only if Tenant is not then in default under the Lease beyond the expiration of any applicable notice and cure periods set forth in the Lease and Tenant attorns to Lender or a third party purchaser at the Foreclosure Sale (a "**Foreclosure Purchaser**").

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

Section 1. **Subordination**. The Lease and the leasehold estate created by the Lease and all of Tenant's rights under the Lease are and shall remain subordinate to the Security Instrument and the lien of the Security Instrument, to all rights of Lender under the Security Instrument and to all renewals, amendments, modifications and extensions of the Security Instrument.

Section 2. **Acknowledgments by Tenant**. Tenant agrees that: (a) Tenant has notice that the Lease and the rent and all other sums due under the Lease have been or are to be assigned to Lender as security for the Loan; (b) in the event that Lender notifies Tenant of a default under the Security Instrument and requests Tenant to pay its rent and all other sums due under the Lease to Lender, Tenant shall pay such sums directly to Lender or as Lender may otherwise request; (c) Tenant shall send a copy of any notice or statement under the Lease to Lender which pertains to (i) a change to Tenant's notice address(es), (ii) an exercise of any of Tenant's option rights under the Lease, and/or (iii) a claim of default or nonperformance by Landlord under the Lease, at the same time Tenant sends such notice or statement to Landlord; and (d) this Agreement satisfies any condition or requirement in the Lease relating to the granting of a nondisturbance agreement.

Section 3. **Foreclosure and Sale**. In the event of a Foreclosure Sale,

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(a) So long as Tenant complies with this Agreement and is not in default under any of the provisions of the Lease beyond the expiration of any applicable notice and cure periods set forth in the Lease, the Lease shall continue in full force and effect as a direct lease between Lender and Tenant, and Lender will not disturb the possession of Tenant, subject to this Agreement, and Lender will not join Tenant in foreclosure proceedings or in any action or proceeding instituted under or in connection with the Mortgage, unless such joinder shall be necessary, in Lender's reasonable determination, to protect Lender's interest under the Mortgage or is otherwise required under applicable law, and in either case Lender shall not seek affirmative relief from Tenant in such action or proceeding or, provided Tenant is not in default beyond the expiration of any applicable notice and cure periods set forth in the Lease, seek to terminate the Lease, and any resulting sale of the Property shall be subject to the terms of this Agreement. To the extent that the Lease is extinguished as a result of a Foreclosure Sale, a new lease shall automatically go into effect upon the same provisions as contained in the Lease between Landlord and Tenant, except as set forth in this Agreement, for the unexpired term of the Lease. Tenant agrees to attorn to and accept Lender as landlord under the Lease and to be bound by and perform all of the obligations imposed by the Lease, or, as the case may be, under the new lease, in the event that the Lease is extinguished by a Foreclosure Sale. Upon Lender's acquisition of title to the Property, Lender will perform all of the obligations imposed on the Landlord by the Lease except as set forth in this Agreement; provided, however, that Lender shall not be: (i) liable for any act or omission of a prior landlord (including Landlord) except for such acts or omissions first accruing after Lender has succeeded to the interest of Landlord in the Property; or (ii) subject to any offsets or defenses that Tenant might have against any prior landlord (including Landlord); provided, however, nothing contained in this Paragraph 3(a)(ii) shall preclude Tenant from raising such offsets or defenses set forth in the Lease against a successor to Landlord's interest in the Lease to the extent accruing from and after the date such successor has succeeded to the interest of Landlord in the Property, but only after notice to such successor and the expiration of any applicable cure period provided for in the Lease or any applicable cure period provided in this Agreement (which cure period as applied to such successor shall commence no earlier than the date such successor succeeds to the interest of Landlord in the Property); or (iii) bound by any rent or additional rent which Tenant might have paid in advance to any prior landlord (including Landlord) for a period in excess of one month or by any security deposit, cleaning deposit or other sum that Tenant may have paid in advance to any prior landlord (including Landlord) unless such sum or deposit was transferred to and actually received by Lender; or (iv) bound by any amendment, modification, assignment or termination of the Lease made without the written consent of Lender (except for an assignment that is expressly permitted under the Lease without Landlord's consent as more particularly set forth in Article 17 of the Lease and except for any termination right of Tenant that is expressly set forth in the Lease and except for any amendment entered into that solely documents the exercise by Tenant of any renewal, extension or other option expressly set forth in the Lease (but only to the extent that any such amendment actually serves to memorialize the exercise of any such option(s) by Tenant and not with respect to any other matters set forth in any such amendment); or (v) obligated or liable with respect to any representations, warranties or indemnities contained in the Lease; or (vi) liable to Tenant or any other party for any conflict between the provisions of the Lease and the provisions of any other lease affecting the Property which is not entered into by Lender.

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(b) Upon the written request of Lender after a Foreclosure Sale, the parties shall execute a lease of the Premises upon the same provisions as contained in the Lease between Landlord and Tenant, except as set forth in this Agreement, for the unexpired term of the Lease.

(c) Notwithstanding any provisions of the Lease to the contrary, from and after the date that Lender acquires title to the Property as a result of a Foreclosure Sale, (i) Lender will not be obligated to expend any monies to restore casualty damage in excess of available insurance proceeds; provided, however, that Tenant shall retain all of its rights under Article 22 of the Lease in the event of a casualty; (ii) Tenant shall not have the right to make repairs and deduct the cost of such repairs from the rent without a judicial determination that Lender is in default of its obligations under the Lease; provided, however, that the foregoing shall not preclude Tenant from exercising its rights of self-help and to offset against Rent (as such term is defined in the Lease) as set forth and described in Sections 8.4 and/or 21.2 of the Lease, but only after notice to Lender and the expiration of any applicable cure period provided for in the Lease; (iii) in no event will Lender be obligated to indemnify Tenant, except where Lender is in breach of its obligations under the Lease or where Lender has been negligent in the performance of its obligations as landlord; and (iv) other than determination of fair market value, no disputes under the Lease shall be subject to arbitration unless Lender and Tenant agree to submit a particular dispute to arbitration.

Section 4. **Subordination and Release of Purchase Options.** Tenant represents that it has no right or option of any nature to purchase the Property or any portion of the Property or any interest in the Landlord. To the extent Tenant has or acquires any such right or option, these rights or options are acknowledged to be subject and subordinate to the Security Instrument and are waived and released as to Lender and any Foreclosure Purchaser.

Section 5. **Acknowledgment by Landlord.** In the event of a default under the Security Instrument, at the election of Lender, Tenant, within thirty (30) days of delivery of written request by Lender, shall and is directed to pay all rent and all other sums due under the Lease to Lender without any duty of inquiry and despite any knowledge or notice to the contrary with the same force and effect as if such payment or performance were rendered to Landlord.

Section 6. **Construction of Improvements.** Lender shall not have any obligation or incur any liability with respect to the completion of tenant improvements for the Premises; there is no cash Tenant Allowance in the Lease.

Section 7. **Notice.** All notices under this Agreement shall be deemed to have been properly given if delivered by overnight courier service or mailed by United States certified mail, with return receipt requested, postage prepaid to the party receiving the notice at its address set forth in the Defined Terms (or at such other address as shall be given in writing by such party to the other parties) and shall be deemed complete upon receipt or refusal of delivery.

Section 8. **Miscellaneous.** Lender shall not be subject to any provision of the Lease that is inconsistent with this Agreement. Nothing contained in this Agreement shall be construed to derogate from or in any way impair or affect the lien or the provisions of the Security Instrument. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located. This Agreement may not be modified except by a written instrument duly executed by the parties to this Agreement. Any provision of this Agreement which is

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adjudicated to be invalid, void or illegal shall not invalidate the remaining provisions of this Agreement which shall continue in full force and effect.

Section 9. Liability and Successors and Assigns. In the event that Lender acquires title to the Premises or the Property, Lender shall have no obligation nor incur any liability in an amount in excess of \$3,000,000 and Tenant's recourse against Lender shall in no event exceed the amount of \$3,000,000. This Agreement shall run with the land and shall inure to the benefit of the parties and their respective successors and permitted assigns including a Foreclosure Purchaser. If a Foreclosure Purchaser acquires the Property or if Lender assigns or transfers its interest in the Note and Security Instrument or the Property, all obligations and liabilities of Lender under this Agreement shall terminate and be the responsibility of the Foreclosure Purchaser or other party to whom Lender's interest is assigned or transferred. The interest of Tenant under this Agreement may not be assigned or transferred except in connection with an assignment of its interest in the Lease which has been consented to by Lender or an assignment of its interest in the Lease that is expressly permitted under the Lease without Landlord's consent as more particularly set forth in Article 17 of the Lease.

Section 10. Sanctions Lists.

(a) Tenant and Lender hereby represent, warrant and covenant to each other, that either:

- (i) it is a Regulated Entity (as defined below), or
- (ii) neither it nor any person or entity that directly or indirectly has an ownership interest in it of twenty-five percent (25%) or more, is or will be (A)(1) subject to a U.S. comprehensive sanctions program administered by the U.S. Department of Treasury, Office of Foreign Assets Control ("OFAC"), (2) named on OFAC's U.S. Specially Designated Nationals list, or (3) named on OFAC's Sectoral Sanctions Identifications list ((1), (2) and (3) collectively the "OFAC Sanctions Lists"), (B) named on any other locally required sanctions lists ("Country List"), or (C) named on the United Nations Security Council's sanctions list (the "U.N. List" and together with the OFAC Sanctions Lists and the Country Lists, the "Sanctions Lists").

For purposes of this Section, a "Regulated Entity" shall mean a U.S. public company (including their documented wholly-owned subsidiaries) or any other entity, including a bank, that is regulated by the SEC, FINRA, or Federal Reserve.

Section 11. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be a duplicate original, but all of which together shall constitute one and the same instrument. Each party shall forward original counterparts to the other parties promptly following execution.

[SIGNATURE PAGES FOLLOW]

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IN WITNESS WHEREOF, the parties have executed this Subordination, Nondisturbance and Attornment Agreement as of the Execution Date.

IT IS RECOMMENDED THAT THE PARTIES CONSULT WITH THEIR ATTORNEYS PRIOR TO THE EXECUTION OF THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT.

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

By: MetLife Investment Management, LLC,
a Delaware limited liability company
its investment advisor

By: Matthew W. Sharples
Name: Matthew W. Sharples
Title: Authorized Signatory and Managing Director

ACKNOWLEDGMENT

State of ILLINOIS

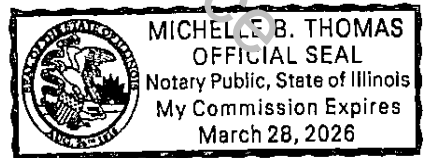
County of COOK

On March 7, 2024 before me, Michelle B. Thomas personally appeared Matthew W. Sharples, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Michelle B. Thomas


(Seal)



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TENANT:

ULTA SALON, COSMETICS & FRAGRANCE, INC.,
a Delaware corporation

By: 
Name: David G. Krueger
Title: Senior Vice President,
Growth and Development

ACKNOWLEDGMENT

State of Illinois

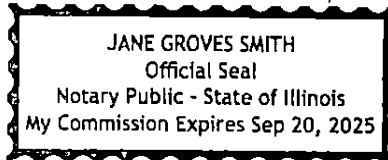
County of Will

On February 21, 2024 before me, Jane Groves Smith, personally appeared David G. Krueger, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Jane Groves Smith

(Seal)



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LANDLORD:

FASHION OUTLETS OF CHICAGO LLC
a Delaware limited liability company

By: _____

Name:

Title:

David M. Short
Executive Vice President
Asset Management

ACKNOWLEDGMENT

State of _____

County of _____

On _____, 2024 before me _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

See Attached

WITNESS my hand and official seal.

Signature _____

(Seal)

Property of Cook County Clerk's Office

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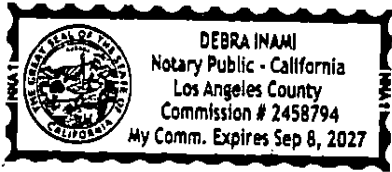
CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

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 February 27, 2024 before me, Debra Inami, Notary Public
Date Here Insert Name and Title of the Officer
 personally appeared David Short
Name(s) of Signer(s)

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 Debra Inami
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

Corporate Officer – Title(s): _____ Corporate Officer – Title(s): _____

Partner – Limited General Partner – Limited General

Individual Attorney in Fact Individual Attorney in Fact

Trustee Guardian or Conservator Trustee Guardian or Conservator

Other: _____ Other: _____

Signer is Representing: _____ Signer is Representing: _____

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EXHIBIT A

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 N01th, 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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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