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Illinois Anti-Predatory Lending Database Program

Doc#: 1819149014 Fee: \$100.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 07/10/2018 09:18 AM Pg: 1 of 27

Certificate of Exemption



1865A3860014

CAB

1-13

Report Mortgage Fraud
844-768-1713

The property identified as: **PIN:** 14-08-121-022-0000

Address:

Street: 5300-5324 N. Broadway

Street line 2:

City: Chicago

State: IL

ZIP Code: 60640

Lender: A10 Capital, LLC

Borrower: shopping Center BF, LLC

Loan / Mortgage Amount: \$4,200,000.00

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

Certificate number: A68FE6B3-6619-4CA5-8BAD-37F9FFE5F8C6

Execution date: 6/29/2018

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A10 CAPITAL

*Prepared by, recording requested by,
and when recorded mail to:*

A10 Capital, LLC
Attn: Jackie Cox
800 W. Main Street, Suite 1100
Boise, Idaho 83702

Address of Property: 5300-5324 N Broadway, Chicago, Illinois 60640

Permanent Parcel Number(s): 14-08-121-022-0000; 14-08-121-023-0000; 14-08-121-024-0000; 14-08-121-025-0000; 14-08-121-026-0000; 14-08-121-027-0000; 14-08-121-032-0000

Loan #AP-IL-SS-18-029-0341-001

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

THIS MORTGAGE WITH ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "*Mortgage*") is made effective as of July 10, 2018, by **Shopping Center BF, LLC**, an Illinois limited liability company (the "*Mortgagor*"), for the benefit of **A10 Capital, LLC**, a Delaware limited liability company (together with its successors and/or assigns, the "*Mortgagee*").

WITNESSETH:

WHEREAS, Mortgagor has requested that Mortgagee make a loan (the "*Loan*") to Mortgagor in the aggregate principal amount of FOUR MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$4,200,000.00) (the "*Loan Amount*");

WHEREAS, the Loan is evidenced by that certain Promissory Note dated of even date herewith, given by Mortgagor to Mortgagee (the "*Note*"), with interest from the date hereof at the rates set forth in the Loan Agreement, such interest and the principal amount thereof to be payable in accordance with the terms and conditions provided in the Loan Agreement, and having a maturity date of August 1, 2028; and

WHEREAS, Mortgagor desires to secure the payment of the Indebtedness (as defined in the Loan Agreement) and the performance of its obligations under the Loan Documents.

NOW, THEREFORE, in consideration of the making of the Loan and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Mortgagor hereby agrees, covenants, represents and warrants with and to Mortgagee as follows:

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ARTICLE 1 DEFINITIONS

Section 1.1 Definitions. As used herein, the following terms shall have the following meanings:

"Affiliate" means, as to any Person, (a) any corporation in which such Person or any partner, shareholder, director, officer, member, or manager of such Person, at any level, directly or indirectly owns or controls more than twenty percent (20%) of the beneficial interest, (b) any partnership, joint venture or limited liability company in which such Person or any partner, shareholder, director, officer, member, or manager of such Person, at any level, is a partner, joint venturer or member, (c) any trust in which such Person or any partner, shareholder, director, officer, member or manager of such Person, at any level, or any individual related by birth, adoption or marriage to such Person, is a trustee or beneficiary, (d) any entity of any type which is directly or indirectly owned or controlled by (or is under common control with) such Person or any partner, shareholder, director, officer, member or manager of such Person, at any level, (e) any partner, shareholder, director, officer, member, manager or employee of such Person, or (f) any individual related by birth, adoption or marriage to any partner, shareholder, director, officer, member, manager or employee of such Person. Each Mortgagor Party shall be deemed to be an Affiliate of Mortgagor.

"Closing Date" means the date hereof.

"Debt" means, for any Person, without duplication: (a) all indebtedness of such Person for borrowed money, for amounts drawn under a letter of credit, or for the deferred purchase price of property for which such Person or any of its assets is liable, (b) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person or any of its assets would be liable or subject, if such amounts were advanced under the credit facility, (c) all amounts required to be paid by such Person as a guaranteed payment to partners or a preferred or special dividend, including any mandatory redemption of shares or interests, (d) all indebtedness guaranteed by such Person, directly or indirectly, (e) all obligations under leases that constitute capital leases for which such Person or any of its assets is liable or subject, and (f) all obligations of such Person under interest rate swaps, caps, floors, collars, and other interest hedge agreements, in each case whether such Person or any of its assets is liable or subject, contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss. For the avoidance of doubt, the term "Debt" as used in connection with Mortgagor includes, without limitation, any mezzanine financing or secondary financing of any kind on the Mortgaged Property, or special financing or special tax assessments for energy-efficient improvements and renewable energy projects relating to the Mortgaged Property.

"Lien" means any interest, or claim thereof, in the Mortgaged Property securing an obligation owed to, or a claim by, any Person other than the owner of the Mortgaged Property, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of trust, mortgage, assignment, encumbrance, pledge, security agreement, conditional sale, judgment or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" shall include reservations, exceptions, encroachments,

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easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Mortgaged Property.

“Loan Agreement” means that certain Loan Agreement dated of even date herewith, by and between Mortgagor, as borrower, and Mortgagee, as lender, as the same may hereafter be amended or restated.

“Mortgagor Party” means any Person with any beneficial ownership in Mortgagor, and Guarantor.

“Mortgaged Property” means, collectively, (1) the real property located in Cook County, Illinois, as further described in Exhibit A annexed hereto, together with any greater estate therein which hereafter may be acquired by Mortgagor (the **“Land”**), (2) all buildings, structures and other improvements, now or at any time hereafter situated, placed or constructed upon the Land (the **“Improvements”**), (3) all materials, supplies, equipment, apparatus and other items of personal property and fixtures now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in, or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities, and all other utilities whether or not situated in easements (the **“Fixtures”**), (4) all right, title and interest of Mortgagor in and to all goods, accounts, general intangibles, instruments, documents, chattel paper, choses in action, and all other personal property of any kind or character, including such items of personal property as defined in the UCC, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including, without limitation, account receivables, payment intangibles, letters of credit, deposit accounts, investment property, commercial tort claims, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights, trademarks, goodwill, chattel paper, documents, trade names, licenses and/or franchise agreements, rights of Mortgagor under leases of fixtures or other personal property or equipment, general intangibles, inventory, all refundable, returnable, or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees, and development costs (the **“Personalty”**), (5) all plans, specifications, shop drawings, and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the **“Plans”**), (6) all leases, other rental agreements, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or hereafter made at any time while this Mortgage is in effect), together with any extensions or renewals thereof, which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the **“Leases”**), (7) rents, revenues, income, proceeds, profits, security and other types of deposits, termination fees, and other benefits paid or payable by parties to the Leases other than Mortgagor, for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property (the **“Rents”**), (8) all other agreements, such as construction contracts, architects agreements, engineers’ contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation,

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maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the “*Property Agreements*”), (9) all rights, privileges, tenements, hereditaments, rights of way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (10) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the aforesaid property now or hereafter acquired by Mortgagor, (11) all of Mortgagor’s right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures or Personalty, (12) all mineral, water, oil and gas rights now or hereafter acquired relating to all or any part of the Land, and (13) all accessions, replacements and substitutions for any of the foregoing and all cash and non-cash proceeds of the foregoing. As used in this Mortgage, the term “Mortgaged Property” shall mean all or, where the context permits or requires, any portion of the aforesaid property or any interest therein.

“*Permitted Encumbrances*” means the outstanding easements, restrictions and other matters approved by Mortgagee, as more particularly set forth in Exhibit B annexed hereto.

“*Site Assessment*” as defined in the Indemnity.

“*Transfer*” means any direct or indirect sale, transfer, conveyance, installment sale, master lease, mortgage, pledge, encumbrance, grant of Lien or other interest, alienation or assignment, whether voluntary or involuntary of all or any portion of the legal or beneficial ownership of, or any interest in (a) the Mortgaged Property, or any part thereof, or (b) Mortgagor, including any agreement to transfer or cede to another Person any voting, management or approval rights, or any other rights, appurtenant to any such legal or beneficial ownership or other interest. “Transfer” is specifically intended to include (x) any pledge or assignment, directly or indirectly, of a controlling interest in Mortgagor, any general partner, member, controlling limited partner or controlling shareholder for purposes of securing so-called “mezzanine” indebtedness and (y) any encumbrance on the Mortgaged Property resulting from special financing or special tax assessments for energy-efficient improvements and renewable energy projects relating to the Mortgaged Property.

Words and terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Loan Agreement. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. The Recitals set forth above are material, true and correct and are incorporated by this reference into this Mortgage as though fully set forth herein.

ARTICLE 2 GRANT AND FUTURE ADVANCES

Section 2.1 Grant. To secure the payment of the Indebtedness and the performance of the Obligations, in accordance with the terms and conditions hereof and of the Note and of the Loan Documents, and all extensions, modifications and renewals thereof, and the performance of the covenants and agreements contained therein, and also to secure the payment

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of any and all other Indebtedness, direct or contingent, that may now or hereafter become owing from Mortgagor to Mortgagee in connection with the Loan Documents, and in consideration of the Loan Amount in hand paid, receipt of which is hereby acknowledged, Mortgagor hereby irrevocably mortgages, grants, bargains, pledges, sells, warrants, conveys, alienates, remises, releases, assigns, sets over, transfers and confirms to Mortgagee, a lien and security interest in all right, title and interest of Mortgagor now owned or hereafter acquired in and to the Mortgaged Property.

ARTICLE 3 SECURITY AGREEMENT

Section 3.1 Security Interest. This Mortgage constitutes a "Security Agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, Mortgagor grants to Mortgagee a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents, Property Agreements and all other Mortgaged Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements sent to Mortgagor at least ten (10) days' prior to any action under the UCC shall, except as otherwise provided by applicable law, constitute reasonable notice to Mortgagor.

Section 3.2 Financing Statements. Mortgagor hereby authorizes Mortgagee to prepare such financing statements, including an all assets financing statement, and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder, and Mortgagee may cause such statements and assurances to be recorded and filed at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

Section 3.3 Fixture Filing. This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Mortgagor (debtor) and Mortgagee (secured party) as set forth in Section 7.3 of this Mortgage.

Section 3.4 Bank Account. Mortgagor hereby expressly grants to Mortgagee a security interest in any and all bank accounts that it maintains relating to the Mortgaged Property (collectively, the "*Deposit Account*"), which Deposit Account shall be subject to the DACA. Mortgagor hereby represents and warrants that it will not close the Deposit Account and, in the event Mortgagor opens any other deposit account after obtaining Mortgagee's prior written consent, Mortgagor hereby grants Mortgagee a security interest therein and will execute the DACA and all other necessary documentation to perfect Mortgagee's security interest therein.

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ARTICLE 4 ASSIGNMENT OF LEASES AND RENTS

Section 4.1 Assignment. As further security for the payment of the Indebtedness and the performance of the Obligations, Mortgagor does hereby absolutely, unconditionally and irrevocably sell, assign, transfer, set over and deliver unto Mortgagee all of Mortgagor's rights, interests and privileges as lessor under the Leases for the Mortgaged Property, together with the immediate and continuing right to collect and receive all of the Rents, income, receipt and revenues arising from each of the assigned Leases covering or affecting all or any part of the Mortgaged Property. Mortgagor hereby appoints Mortgagee as its irrevocable attorney-in-fact to appear in any action and/or to collect any such award or payment, subject to the terms hereof.

The assignment and security interest granted in this Section 4.1 applies to all Leases now or hereafter made covering the Mortgaged Property or any portion thereof, together with any extension or renewal of same, this assignment of other present and future leases and present and future rental agreements being effective without further or supplemental assignment.

Section 4.2 License. Until notice from Mortgagee, Mortgagor shall have the right under a license granted hereby to collect all Rents arising from or out of the Leases; provided, however, regardless of the existence of an Event of Default, any Rents comprised of a termination fee or other settlement amount paid to Mortgagor in connection with a Lease termination or settlement entered into by Mortgagor subject to the terms and conditions set forth in Section 6.37 of the Loan Agreement, shall be paid over to Mortgagee to be held in an escrow reserve to be disbursed in connection with Rollover Improvements affecting the Mortgaged Property, in accordance with the Loan Agreement. Failure or discontinuance of Mortgagee at any time, or from time to time, to collect any such Rents shall not in any manner affect the subsequent enforcement by Mortgagee of the right, power and authority to collect the same. The collection of such Rents and the application of such Rents hereunder shall not cure or waive any Event of Default or invalidate any act done in response to such Event of Default. Notwithstanding the collection, receipt and application of any Rents by Mortgagee, Mortgagee shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default.

Section 4.3 Foreclosure. Upon issuance of any deed(s) pursuant to any foreclosure of this Mortgage or deed(s) in lieu of foreclosure, all right, title and interest of Mortgagor in and to the Leases shall vest in and become the absolute property of the grantee or grantees of such deed(s) without any further act or assignment by Mortgagor.

Section 4.4 No Merger of Estates. So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and undischarged, the fee estate and the leasehold estate (if any) to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any lessee or any third party by purchase or otherwise.

Section 4.5 Indemnification of Mortgagee. Nothing herein contained shall be deemed to obligate Mortgagee to perform or discharge any obligation, duty or liability of any

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lessor under any Lease, and Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any and all liability, loss or damage which Mortgagee may or might incur under any Lease or by reason of this assignment; and any and all such liability, loss or damage incurred by Mortgagee, together with the costs and expenses, including reasonable attorneys' fees, incurred by Mortgagee in defense of any claims or demands therefor (whether successful or not), shall constitute a portion of the Indebtedness, and Mortgagor shall reimburse Mortgagee therefor on demand.

ARTICLE 5 WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee as follows:

Section 5.1 Title to Mortgaged Property and Lien of this Instrument. Mortgagor owns the Mortgaged Property free and clear of any and all Liens, except the Permitted Encumbrances. This Mortgage creates valid, enforceable liens and security interests against the Mortgaged Property subject only to the Permitted Encumbrances. Mortgagor shall, without liability, cost or expense to Mortgagee, protect, preserve and defend title to the Mortgaged Property. Mortgagor shall give Mortgagee written notice immediately upon knowledge of any challenge to title to the Mortgaged Property.

Section 5.2 Lien Status.

(a) This Mortgage is a valid first mortgage and is a valid first lien against the Mortgaged Property.

(b) Mortgagor shall preserve and protect the security interest status of this Mortgage and the other Loan Documents. If any other Lien or security interest other than the Permitted Encumbrances is asserted against any of the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such Lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause the Lien or security interest to be released within sixty (60) days.

Section 5.3 Payment and Performance. Mortgagor shall pay the Indebtedness when due under the Loan Documents and shall perform the Obligations in full when they are required to be performed.

Section 5.4 Replacement of Fixtures and Personalty. Mortgagor shall not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete or is replaced by an article of equal or better suitability and value, owned by Mortgagor, subject to the liens and security interests of this Mortgage and the other Loan Documents, and free and clear of any other Lien or security interest except such as may be first approved in writing by Mortgagee.

Section 5.5 Maintenance of Rights of Way, Easements and Licenses. Mortgagor shall maintain all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Mortgaged Property and will not,

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without the prior consent of Mortgagee, consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgaged Property. Mortgagor shall comply with all restrictive covenants affecting the Mortgaged Property and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property. Without Mortgagee's consent, which may be granted or withheld in its Permitted Discretion, Mortgagor shall not enter into or modify any reciprocal easement agreement, declaration, covenant, condition or restriction, ground lease, any operating agreement, or any document recorded against the Mortgaged Property.

Section 5.6 Environmental Compliance. The Mortgaged Property is in compliance, and Mortgagor will continue to maintain the Mortgaged Property in compliance, with all applicable federal, state, local and all other environmental laws, rules and regulations.

Section 5.7 Insurance. Mortgagor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Mortgagor and the Mortgaged Property as required pursuant to the Loan Agreement.

Section 5.8 Environmental Matters. All representations, warranties, covenants and indemnities relating to environmental matters set forth in the Indemnity are incorporated into this Mortgage by reference thereto as if set forth in full herein.

Section 5.9 Indemnification. Mortgagor shall indemnify, defend and hold Mortgagee harmless from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs and disbursements (including reasonable fees and actual expenses of Mortgagee's counsel) of any kind or nature whatsoever, including those arising from the joint, concurrent or comparative negligence of Mortgagee, in connection with (1) any inspection, review or testing of or with respect to the Mortgaged Property, (2) any investigative, administrative, mediation, arbitration, or judicial proceeding, whether or not Mortgagee is designated a party thereto, commenced or threatened at any time (including after the repayment of the Loan) in any way related to the execution, delivery or performance of any Loan Document or to the Mortgaged Property, (3) any proceeding instituted by any Person claiming a Lien, and (4) any brokerage commissions or finder's fees claimed by any broker or other party in connection with the Loan, the Mortgaged Property, or any of the transactions contemplated in the Loan Documents, except to the extent any of the foregoing is caused solely by Mortgagee's gross negligence or willful misconduct. Any transfer and/or assignment of the Loan shall not in any way affect or release the indemnification of Mortgagee or any assignees hereunder.

Section 5.10 Other Representation, Warranties and Covenants. All of the representations, warranties and covenants in all Loan Documents are incorporated herein by reference and, together with the covenants in this Article 5, shall be covenants running with the land. All persons or entities that may have or acquire an interest in the Mortgaged Property (without in any way implying that Mortgagee has or will consent to any such conveyance or transfer of the Mortgaged Property) shall be deemed to have notice of, and be bound by, the terms of the Note and the other Loan Documents; provided, however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

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ARTICLE 6 EVENT OF DEFAULT; REMEDIES

Section 6.1 Event of Default. Each of the following shall constitute an “*Event of Default*” under the Note, the Loan Agreement, this Mortgage, and all other Loan Documents:

(a) **Payments.** Mortgagor’s failure to pay any regularly scheduled installment of principal, interest or other amount when due under the Note or any other Loan Document.

(b) **Insurance.** Mortgagor’s failure to maintain insurance as required under Section 6.42 of the Loan Agreement or if, upon application by Mortgagee to two (2) or more fire insurance companies which are lawfully doing business in the state in which the Mortgaged Property is located and which are issuing policies of fire insurance upon buildings situated within the area wherein the Mortgaged Property is situated, such companies shall refuse to issue such policies.

(c) **Payment of Impositions.** Mortgagor’s failure to pay when due and in any event before any penalty or interest attaches, all taxes, installments of assessments, governmental charges, water charges, sewer charges and other fees, taxes, charges and assessments of every kind and nature whatsoever assessed or charged against or constituting a lien on the Mortgaged Property or any interest therein or accruing by reason of the operation of the Mortgaged Property by Mortgagor, including sales, use, employment and other taxes based on such operations (the “*Impositions*”). In the event of a court decree or an enactment after the date hereof by any legislative authority of any law imposing upon Mortgagee the payment of the whole or any part of the Impositions herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of this Mortgage or the Indebtedness secured by this Mortgage or Mortgagee’s interest in the Mortgaged Property, so as to impose such Imposition on Mortgagee or on the interest of Mortgagee in the Mortgaged Property, then, in any such event, Mortgagor’s failure to bear and pay the full amount of such Impositions when due and in any event before any penalty or interest attaches shall constitute a default under this Mortgage; provided, however, that if for any reason payment by Mortgagor of any such Imposition would be unlawful, or if the payment thereof would constitute usury or render the Indebtedness secured hereby wholly or partially usurious, Mortgagee, at its option, may declare the whole sum secured by this Mortgage with interest thereon to be immediately due and payable including payment of any applicable Prepayment Premium in accordance with the terms of the Loan Agreement, or Mortgagee, at its option, may pay that amount or portion of such Imposition as renders the Indebtedness unlawful or usurious, in which event Mortgagor shall concurrently therewith pay the remaining lawful and non usurious portion or balance of said Imposition.

(d) **Transfer.** Any Transfer occurs in violation of Section 6.24 of the Loan Agreement.

(e) **Covenants.** Mortgagor’s or any Mortgagor Party’s failure to perform, observe or comply with any of the agreements, covenants or provisions contained in this Mortgage or in any of the other Loan Documents (other than those agreements, covenants and provisions constituting an Event of Default referred to elsewhere in this Article 6), and the continuance of such failure for thirty (30) days after notice by Mortgagee to Mortgagor; provided, however,

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subject to any shorter period for curing any failure by Mortgagor as specified in any of the other Loan Documents, Mortgagor shall have an additional thirty (30) days to cure such failure if (1) such failure does not involve the failure to make payments on a monetary obligation; (2) such failure is curable but cannot reasonably be cured within thirty (30) days; (3) Mortgagor is diligently undertaking to cure such default, and (4) Mortgagor has provided Mortgagee with security reasonably satisfactory to Mortgagee against any interruption of payment or impairment of the Mortgaged Property as a result of such continuing failure. The notice and cure provisions of this Section 6.1(e) do not apply to the other Events of Default described in this Article 6.

(f) **Representations and Warranties.** Any representation or warranty made in any Loan Document proves to be untrue in any material respect when made or deemed made.

(g) **Other Encumbrances.** The occurrence of any default under any document or instrument, other than the Loan Documents, evidencing or creating a Lien on the Mortgaged Property or any part thereof.

(h) **Involuntary Bankruptcy or Other Proceeding.** Commencement of an involuntary case or other proceeding against Mortgagor, any Mortgagor Party or any other Person having an ownership in the Mortgaged Property (each, a "**Bankruptcy Party**") which seeks liquidation, reorganization or other relief with respect to it or its debts or other liabilities under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any of its property, and such involuntary case or other proceeding shall remain undismissed or unstayed for a period of sixty (60) days; or an order for relief against a Bankruptcy Party shall be entered in any such case under the Federal Bankruptcy Code.

(i) **Voluntary Petitions, Etc.** Commencement by a Bankruptcy Party of a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its Debt or other liabilities under any bankruptcy, insolvency or other similar law or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official for it or any of its property, or consent by a Bankruptcy Party to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or the making by a Bankruptcy Party of a general assignment for the benefit of creditors, or the failure by a Bankruptcy Party, or the admission by a Bankruptcy Party in writing of its inability to pay its debts generally as they become due, or any action by a Bankruptcy Party to authorize or effect any of the foregoing.

(j) **Other Insolvency.** The occurrence of any of the following: (1) if Mortgagor becomes insolvent; (2) if Mortgagor generally does not pay its debts as they become due; (3) if Mortgagor makes an assignment for the benefit of creditors; (4) if Mortgagor or its agents contacts any creditor to advise of Mortgagor's inability to pay its debts as they become due; or (5) if Mortgagor calls or causes to be called a meeting of creditors for the composition of debts.

(k) **Other Defaults.** The occurrence of any default by Mortgagor under any other document or instrument evidencing or securing any other loan from Mortgagee to Mortgagor.

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(l) **Death or Dissolution of Guarantor.** The death or liquidation, termination or dissolution of any Guarantor, unless Mortgagee is provided with additional collateral or a replacement guarantor that is reasonably acceptable to Mortgagee within sixty (60) days after such death.

Section 6.2 Remedies. If an Event of Default (as defined in this Mortgage) exists, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses in accordance with applicable law:

(a) **Insolvency Events.** Upon the occurrence of any Event of Default described in Section 6.1(h), 6.1(i) or 6.1(j), the obligations of Mortgagee to advance additional amounts hereunder, if any, shall immediately terminate, and all amounts due under the Loan Documents immediately shall become due and payable, all without written notice and without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or any other notice of default of any kind, all of which are hereby expressly waived by Mortgagor; provided, however, if the Bankruptcy Party under Section 6.1(h) or 6.1(i) is other than Mortgagor, then all amounts due under the Loan Documents shall become immediately due and payable at Mortgagee's election, in Mortgagee's sole discretion.

(b) **Acceleration.** Declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

(c) **Entry on Mortgaged Property.** Enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Mortgagor remains in possession of the Mortgaged Property after an Event of Default and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(d) **Operation of Mortgaged Property.** Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable) and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 6.8.

(e) **Foreclosure and Sale.** Institute proceedings for the complete foreclosure or to enforce any covenants and agreements of this Mortgage, or institute an action on the Note and obtain judgment thereon, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold, and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other persons claiming

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or to claim the property sold or any part thereof, by, through or under Mortgagor. To the extent allowed by law, Mortgagor hereby waives any and all redemption rights. Mortgagee may be a purchaser at such sale and if Mortgagee is the highest bidder, may credit the portion of the purchase price that would be distributed to Mortgagee against the Indebtedness in lieu of paying cash.

Mortgagee may sell any personal property pursuant to the UCC (as now in effect or as hereafter amended or succeeded) and with respect to any notice required or permitted under the UCC, Mortgagor agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale, (i) it shall not be necessary for Mortgagee to be physically present, or to have constructive possession of any personal property, and the title to and right of possession of such personal property shall pass to the purchaser thereof as completely as if Mortgagee had been actually present and delivered to purchaser the personal property at such sale, (ii) any prerequisite to the validity of such sale shall be presumed to have been performed, (iii) the receipt of Mortgagee or the other party making the sale shall be a sufficient discharge to the purchaser or purchasers for his or their purchase money and no such purchaser or purchasers, or his or their assigns or personal representatives, shall thereafter be obligated regarding the application of such purchase money or be in any way answerable for any loss, misapplication or non-application thereof, and (iv) to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the personal property sold, and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Mortgagee may be a purchaser at such sale and if Mortgagee is the highest bidder, may credit the portion of the purchase price that would be distributed to Mortgagee against the Indebtedness in lieu of paying cash. Notwithstanding anything contained herein to the contrary, in accordance with Section 9.604 of the UCC, Mortgagee may proceed under the UCC as to all personal property covered hereby or, at Mortgagee's election, Mortgagee may proceed as to both the real and personal property covered hereby in accordance with Mortgagee's rights and remedies in respect of the real property, in which case the provisions of the UCC (and this paragraph) shall not apply.

(f) Receiver. Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness, the appointment of a receiver of the Mortgaged Property, and Mortgagor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, enter into leases, borrow funds, maintain, and otherwise operate the Mortgaged Property and generally do anything which Mortgagor could legally do if Mortgagor were in possession of the Mortgaged Property, and shall apply such Rents in accordance with the provisions of Section 6.8.

(g) Sale of Mortgaged Property. Cause the Mortgaged Property or any part thereof to be sold as follows:

(1) Mortgagee may proceed as if all of the Mortgaged Property were real property in accordance with Section 6.2(e) above, or Mortgagee may elect to treat any of the Mortgaged Property which consists of a right in action or which is property that can be severed from the Land without causing structural damage thereto as if the same were

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personal property, and dispose of the same in accordance with subsection (2) below, separate and apart from the foreclosure of real property, the remainder of the Mortgaged Property being treated as real property.

(2) Should Mortgagee elect to cause any of the Mortgaged Property (excluding Land and Improvements) to be disposed of as personal property as permitted by subsection (1) above, Mortgagee may exercise in respect of such Mortgaged Property, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Mortgaged Property) and also may (i) require Mortgagor to, and Mortgagor hereby agrees that it will, at its expense and upon request of Mortgagee forthwith, assemble all or part of such Mortgaged Property as directed by Mortgagee and make it available to Mortgagee at a place to be designated by Mortgagee which is reasonably convenient to both parties and (ii) without notice except as specified below, sell such Mortgaged Property or any part thereof in one or more parcels at public or private sale, at any of Mortgagee's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as Mortgagee may deem commercially reasonable. Mortgagor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to Mortgagor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. Mortgagee shall not be obligated to make any sale of such Mortgaged Property regardless of notice of sale having been given. Mortgagee may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(3) In the event of a sale or other disposition of the Mortgaged Property, or any part thereof, and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts, such as default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchase, payment of purchase money and other facts affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts; and any such deed or conveyance shall be conclusive against all persons as to such facts recited therein.

(4) The acknowledgment of the receipt of the purchase money, contained in any deed or conveyance executed as aforesaid, shall be sufficient discharge to the grantee of all obligations to see the proper application of the consideration therefor as hereinafter provided. The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted or rental or lease contract or other agreement made in violation of any provision of this Mortgage and may take immediate possession of the Mortgaged Property free from, and despite the terms of, such grant of easement, rental or lease contract or other agreement.

(5) Upon the completion of any sale or sales made by Mortgagee under or by virtue of this Section 6.2(h), Mortgagee or any officer of any court empowered to so do, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Solely for purposes of

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any such sale or sales, Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of Mortgagor in its name and stead to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property or any part thereof and the rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, with Mortgagor hereby ratifying and confirming all that their said attorney or any substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, Mortgagor, if so requested by Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to Mortgagee or to such purchaser or purchasers all such instruments as may be advisable in the judgment of Mortgagee, for the purpose as may be designated in such request. Any such sale or sales made under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all of the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, subject to any rights of redemption provided by law, and shall be a perpetual bar, both at law and in equity, against Mortgagor and any and all persons claiming or who may claim the same or any part thereof from, through or under Mortgagor subject to any rights of redemption provided by law.

(6) Mortgagor hereby expressly waives any right which it may have to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto.

(h) **Other.** Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity, including, but not limited to, an action for specific performance of any covenant contained in the Loan Documents, or obtaining a judgment on the Note either before, during or after any proceeding to enforce this Mortgage, or other *In Rem* proceedings against Mortgagee brought in Cook County, Illinois or any federal court of competent jurisdiction in Illinois.

(i) **Rental Value.** Upon the occurrence of any Event of Default and pending the exercise by Mortgagee of its right to exclude Mortgagor from all or any part of the Mortgaged Property, Mortgagor agrees to pay the fair and reasonable rental value for the use and occupancy of the Mortgaged Property or any portion thereof which are in its possession for such period and, upon default of any such payment, will vacate and surrender possession of the Mortgaged Property to Mortgagee or to a receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery or possession of the Mortgaged Property for non-payment of rent, however designated.

Section 6.3 Mortgagee's Right to Perform the Obligations. If Mortgagor shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents, then while any Event of Default exists, and without notice to or demand upon Mortgagor, and without waiving or releasing any other right, remedy or recourse Mortgagee may have because of such Event of Default, Mortgagee may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Mortgagor, and shall have the right to enter upon the Mortgaged Property for such purpose and to take all such action thereon and with respect to the Mortgaged Property as it may deem necessary or appropriate. If Mortgagee shall elect to pay any sum due with reference to the Mortgaged Property, Mortgagee may do so in

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reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Loan Documents, Mortgagee shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. Mortgagor shall indemnify, defend and hold Mortgagee harmless from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever, including reasonable attorneys' fees, incurred or accruing by reason of any acts performed by Mortgagee pursuant to the provisions of this Section 6.3, including those arising from the joint, concurrent, or comparative negligence of Mortgagee, except as a result of Mortgagee's gross negligence or willful misconduct. All sums paid by Mortgagee pursuant to this Section 6.3, and all other sums expended by Mortgagee to which it shall be entitled to be indemnified, together with interest thereon at the Interest Rate *plus* the Default Rate from the date of such payment or expenditure until paid, shall constitute additions to the Loan, shall be secured by the Loan Documents, and shall be paid by Mortgagor to Mortgagee upon demand.

Section 6.4 Remedies Cumulative, Concurrent and Nonexclusive. Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (i) shall be cumulative and concurrent, (ii) may be pursued separately, successively or concurrently against Mortgagor, any Mortgagor Party, or others obligated under the Note and the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (iii) may be exercised as often as occasion therefor shall arise and the exercise or failure to exercise any of them shall not be construed as a waiver or release therefor or of any other right, remedy or recourse, and (iv) are intended to be, and shall be, nonexclusive. No action of Mortgagee in the enforcement of any rights or remedies under the Loan Documents or otherwise at law or equity shall be deemed to cure an Event of Default.

Section 6.5 Release of and Resort to Collateral. Mortgagee may release, regardless of consideration and without the necessity for any notice to a holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents. For payment of the Indebtedness, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

Section 6.6 Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisalment, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment, (b) all notices of any Event of Default or of Mortgagee's election to exercise or its actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

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Section 6.7 Discontinuance of Proceedings. If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents, and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgaged Property, and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

Section 6.8 Application of Proceeds. The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of, the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the order set forth in Section 2.7 of the Loan Agreement, unless otherwise required by applicable law.

Section 6.9 Occupancy After Sale. The purchaser at any judicial or foreclosure sale shall become the legal owner of the Mortgaged Property. All occupants of the Mortgaged Property shall become tenants of the purchaser at the foreclosure sale. In the event that there is a judicial sale hereunder and if at the time of such sale Mortgagor, or its successor or assign, is occupying the Mortgaged Property or any part thereof so sold, each and all shall immediately become the tenant of the purchaser at such sale which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a rental per day based upon the value of the Mortgaged Property, such rental to be due daily to the purchaser. An action of unlawful detainer shall lie if the tenant holds over after a demand in writing for possession of said Mortgaged Property and this agreement and the trustee's deed shall constitute a lease and agreement under which any such tenant's possession arose and continued.

Section 6.10 Interest After Default. If any payment due hereunder or under the Note or any other Loan Document is not paid when due, either at stated or accelerated maturity or pursuant to any of the terms hereof, then and in such event, Mortgagor shall pay interest thereon from and after the date on which such payment first becomes due at the interest rate provided for in the Loan Agreement, and such interest shall be due and payable, on demand, at such rate until the entire amount due is paid to Mortgagee, whether or not any action shall have been taken or proceeding commenced to recover the same or to foreclose this Mortgage. Nothing in this Section 6.10 or in any other provision of this Mortgage shall constitute an extension of the time of payment of the Indebtedness. After entry of a judgment on any of the Loan Documents or a judgment in mortgage foreclosure hereunder, interest shall continue to accrue under said judgment, the Note, and this Mortgage at the rates set forth in the Loan Agreement. This Mortgage shall not, solely for purposes of determining interest payable under the Note, merge with any judgment on any Loan Document or a judgment in mortgage foreclosure under this Mortgage.

Section 6.11 Additional Advances and Disbursements; Costs of Enforcement.

(a) If any Event of Default exists, Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor, including, but not limited to, the payment of monetary sums due to third parties or otherwise or take such actions

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as are required to cure such Event of Default. All sums advanced and expenses incurred at any time by Mortgagee under this Section 6.11, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Interest Rate *plus* the Default Rate (as defined in the Loan Agreement), and all such sums, together with interest thereon, shall be secured by this Mortgage.

(b) Mortgagor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage and the other Loan Documents, or the enforcement, compromise or settlement of the Indebtedness, or any claim under this Mortgage and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise.

(c) This Mortgage secures the Indebtedness which includes, without limitation: (i) all advances made by Mortgagee with respect to any of the Mortgaged Property for the payment of taxes, maintenance charges, insurance premiums or costs incurred for the protection of any of the Mortgaged Property or the lien of this Mortgage, and (ii) all expenses incurred by Mortgagee by reason of an Event of Default hereunder. This Mortgage shall constitute a lien on Mortgagor's fee interest in the Mortgaged Property from the time this Mortgage is left of record (or, if this is a purchase money mortgage, from the time of delivery hereof to Mortgagee) for, among other things, all such advances and expenses, plus interest thereon, regardless of the time when such advances are made or such expenses are incurred.

Section 6.12 No Mortgagee in Possession. Neither the enforcement of any of the remedies under this Article 6, the assignment of the Leases and Rents under Article 4, the security interests under Article 3, nor any other remedies afforded to Mortgagee under the Loan Documents, at law or in equity, shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

Section 6.13 Non-Merger. Notwithstanding the recovery or entry of any foreclosure judgment or judgment against Mortgagor, all of the covenants, undertakings and agreements of Mortgagor, whether hereunder or under the Note or any other Loan Document, whether relating thereto or not, shall remain in full force and effect and shall be enforceable strictly in accordance with their terms as fully as though no such judgment had been entered or recovered, it being understood that this Mortgage and the other Loan Documents shall not (solely for the purpose of confirming the continuing validity of Mortgagor's covenants, indemnities and agreements) merge into any foreclosure judgment or judgment entered or recovered by Mortgagee against Mortgagor under any Loan Documents.

ARTICLE 7 MISCELLANEOUS

Section 7.1 Approvals; Third Parties; Conditions. All rights retained or exercised by Mortgagee to review or approve leases, contracts, plans, studies and other matters, including Mortgagor's and any other Person's compliance with laws applicable to Mortgagor, the

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Mortgaged Property or any other Person, are solely to facilitate Mortgagee's credit underwriting, and shall not be deemed or construed as a determination that Mortgagee has passed on the adequacy thereof for any other purpose and may not be relied upon by Mortgagor or any other Person. This Mortgage is for the sole and exclusive use of Mortgagee and Mortgagor and may not be enforced, nor relied upon, by any Person other than Mortgagee and Mortgagor. All conditions of the obligations of Mortgagee hereunder, including the obligation to make advances, are imposed solely and exclusively for the benefit of Mortgagee, its successors and assigns, and no other Person shall have standing to require satisfaction of such conditions or be entitled to assume that Mortgagee will refuse to make advances in the absence of strict compliance with any or all of such conditions, and no other Person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived, in whole or in part, by Mortgagee at any time in Mortgagee's sole discretion.

Section 7.2 Mortgagee Not in Control; No Partnership. None of the covenants or other provisions contained in the Loan Documents shall, or shall be deemed to, give Mortgagee the right or power to exercise control over the affairs or management of Mortgagor, the power of Mortgagee being limited to the rights to exercise the remedies referred to in the Loan Documents. The relationship between Mortgagor and Mortgagee is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Loan Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between Mortgagee and Mortgagor, or to create any equity in the Mortgaged Property in Mortgagee. Mortgagee neither undertakes nor assumes any responsibility or duty to Mortgagor or to any other Person with respect to the Mortgaged Property or the Loan, except as expressly provided in the Loan Documents; and notwithstanding any other provision of the Loan Documents: (1) Mortgagee shall in no event be liable for any Debt, expenses or losses incurred or sustained by Mortgagor; and (2) Mortgagee shall not be deemed responsible for or a participant in any acts, omissions or decisions of Mortgagor or its stockholders, members or partners. Mortgagee and Mortgagor disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between Mortgagee and Mortgagor, or to create any equity in the Mortgaged Property in Mortgagee, or any sharing of liabilities, losses, costs or expenses.

Section 7.3 Notices. Any notice required or permitted to be given under any Loan Document shall be in writing and either shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party. All such notices shall be mailed, sent or delivered, addressed to the party for whom it is intended, at its address set forth below.

If to Mortgagor (debtor):

Shopping Center BF, LLC
 Attn: Catherine V. Patel
 6405 N. Ridgeway
 Lincolnwood, Illinois 60712
 Telephone: _____

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If to Mortgagee (secured party):

A10 Capital, LLC
Attn: Jacqueline C. Cox, EVP
800 W. Main Street, Suite 1100
Boise, Idaho 83702
Telephone: (208) 577-5000

With a copy to:

Perkins Coie LLP
Attn: Stephen C. Hardesty
1111 West Jefferson Street, Suite 500
Boise, Idaho 83702-5391
Telephone: (208) 343-3434

Any notice so addressed and sent by United States mail or overnight courier shall be deemed to be given on the earliest of (1) when actually delivered, (2) on the first Business Day after deposit with an overnight air courier service, or (3) on the third Business Day after deposit in the United States mail, postage prepaid, in each case to the address of the intended addressee. Any notice so delivered in person shall be deemed to be given when receipted for by, or actually received by Mortgagee or Mortgagor, as the case may be. No notice hereunder shall be effective if sent or delivered by electronic means. Either party may designate a change of address by written notice to the other by giving at least ten (10) days' prior written notice of such change of address.

Section 7.4 Amendments and Waivers; References. No amendment or waiver of any provision of the Loan Documents shall be effective unless in writing and signed by the party against whom enforcement is sought. This Mortgage and the other Loan Documents shall not be executed, entered into, altered, amended or modified by electronic means. Any reference to a Loan Document, whether in this Mortgage or in any other Loan Document, shall be deemed to be a reference to such Loan Document as it may hereafter from time to time be amended, modified, supplemented and restated in accordance with the terms hereof.

Section 7.5 Attorney-in-Fact. Mortgagor hereby irrevocably appoints Mortgagee, and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments or assignments, conveyances or further assurances with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Mortgaged Property, and (d) while any Event of Default exists, to perform any obligation of Mortgagor hereunder; provided, however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by

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Mortgagee in such performance shall be included in the Indebtedness and shall bear interest at the Interest Rate *plus* the Default Rate; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section. Mortgagee, as agent for Mortgagor under the powers of attorney, is not a fiduciary for Mortgagor. Mortgagee, in exercising any of its rights or powers pursuant to the powers of attorney, may do so for the sole benefit of Mortgagee and not for Mortgagor.

Section 7.6 Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

Section 7.7 No Waiver. Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.8 Declaration of No Set-Offs. Within ten (10) days after requested by Mortgagee, Mortgagor shall certify to Mortgagee or to any proposed assignee of Mortgagee, in writing duly acknowledged, the amount of principal, interest and other charges then owing on the Indebtedness and other Obligations secured by this Mortgage and by any prior liens, if any, whether there are any set-offs or defenses against them, and whether any default has been asserted by any tenant of the Mortgaged Property.

Section 7.9 Subrogation. To the extent Mortgagee makes future advances which are used to extinguish, extend or renew the Indebtedness secured by the Mortgaged Property, then Mortgagee shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived but are continued in full force and effect in favor of Mortgagee.

Section 7.10 Loan Agreement. If any conflict or inconsistency exists between this Mortgage and the Loan Agreement, the Loan Agreement shall govern.

Section 7.11 Release. Upon payment in full of the Indebtedness and performance in full of the Obligations, Mortgagee, at Mortgagor's expense, shall release the liens created by this Mortgage.

Section 7.12 Waiver of Stay, Moratorium and Similar Rights. Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the Indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee, or any rights or remedies of Mortgagee. To the fullest extent permitted by applicable law, no Mortgagor or Mortgagor Party shall assert, and each hereby waives, any claim against any affiliate or subsidiary of A10 Capital, LLC that is the holder

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of the Note arising out of, in connection with, or as a result of, the Loan or any Loan Documents evidencing the Loan, the transactions contemplated thereby, or the use of the proceeds thereof.

Section 7.13 Joint and Several. If more than one person or entity has executed this Mortgage as “Mortgagor”, the obligations of all such persons or entities hereunder shall be joint and several.

Section 7.14 Post Closing Compliance. Mortgagor and each Mortgagor Party agrees to execute, re-execute, cause any third parties involved in the Loan transaction to execute and/or re-execute, and to deliver to Mortgagee or its legal counsel, as may be deemed appropriate, any document or instrument signed in connection with the Loan which was incorrectly drafted and/or signed, as well as any document or instrument which should have been signed at or prior to the closing of the Loan but which was not so signed and delivered. Mortgagor and each Mortgagor Party agrees to comply with any written request by Mortgagee within ten (10) days after receipt by Mortgagor and each Mortgagor Party of such request. Failure by Mortgagor and each Mortgagor Party to so comply shall, at the option of Mortgagee, constitute an Event of Default hereunder.

Section 7.15 Invalid Provisions. If any provision of any Loan Document is held to be illegal, invalid or unenforceable, such provision shall be fully severable; the Loan Documents shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part thereof; the remaining provisions thereof shall remain in full effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance therefrom; and in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of such Loan Document a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.

Section 7.16 Governing Law. This Mortgage and all other Loan Documents are being executed and delivered, and are intended to be performed, in the State of Illinois, and the laws of the State of Illinois shall govern the rights and duties of the parties hereto and the validity, construction, enforcement and interpretation of this Mortgage and the Loan Documents (without giving effect to principles of conflicts of law).

Section 7.17 Survival. All of the representations, warranties and indemnities of Mortgagor hereunder and under the indemnification provisions of the other Loan Documents shall survive the repayment in full of the Loan and the release of the liens evidencing or securing the Loan, and shall survive the transfer (by sale, foreclosure, conveyance in lieu of foreclosure, or otherwise) of any or all right, title and interest in and to the Mortgaged Property to any party, except with respect to the presence of Hazardous Materials (as defined in the Indemnity) which first became present at, on or under the Mortgaged Property after it was transferred to a third party.

Section 7.18 Titles of Articles, Sections and Subsections. All titles or headings to articles, sections, subsections or other divisions of this Mortgage and the other Loan Documents or the exhibits hereto and thereto are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the parties hereto.

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Section 7.19 Entire Agreement. This Mortgage and the other Loan Documents embody the entire agreement and understanding between Mortgagee and Mortgagor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. Except with respect to the Loan Agreement as stated in Section 7.10, if any conflict or inconsistency exists between this Mortgage and any of the other Loan Documents, the terms of this Mortgage shall control.

Section 7.20 Singular and Plural. Words used in this Mortgage and the other Loan Documents in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular in this Mortgage and the other Loan Documents shall apply to such words when used in the plural where the context so permits and vice versa.

Section 7.21 Phrases. When used in this Mortgage and the other Loan Documents, the phrase “including” shall mean “including, but not limited to,” the phrase “satisfactory to Mortgagee” shall mean “in form and substance satisfactory to Mortgagee in all respects,” the phrase “with Mortgagee’s consent” or “with Mortgagee’s approval” shall mean such consent or approval at Mortgagee’s sole discretion, and the phrase “acceptable to Mortgagee” shall mean “acceptable to Mortgagee at Mortgagee’s sole discretion.”

Section 7.22 Exhibits. The exhibits attached to this Mortgage are incorporated herein and shall be considered a part of this Mortgage for the purposes stated herein.

Section 7.23 Acknowledgement of Copy. Mortgagor acknowledges receiving a true, correct and complete copy of this Mortgage for Mortgagor’s records.

Section 7.24 Conflicting Provisions. In the event of any inconsistencies between the terms and conditions of the following paragraphs and the other terms and conditions of this Mortgage, the terms and conditions of the following paragraphs shall control and be binding:

(a) **Illinois Mortgage Foreclosure Law.** It is the intention of Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the “Act”), and with respect to such Act, Mortgagor agrees and covenants that:

(1) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Act, including, to the extent provided by law, all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference;

(2) Wherever provision is made in this Mortgage or the Loan Agreement for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or

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otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale;

(3) Except as varied by a court of law, all advances, disbursements and expenditures made or incurred by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Mortgage or the Loan Agreement or by the Act (collectively "*Protective Advances*"), shall have the benefit of all applicable provisions of the Act. All Protective Advances shall be so much additional indebtedness secured by this Mortgage and shall be considered part of the Indebtedness, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Note. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 5/15-1302 of the Act;

(4) In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties as provided for in Sections 5/15-1701, 5/15-1703 and 5/15-1704 of the Act; and

(5) Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act. As provided by law and pursuant to Section 5/15-1601(b) of the Act, Mortgagor hereby waives any and all right of redemption.

[SIGNATURE PAGE TO FOLLOW]

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EXHIBIT A

Legal Description

LOTS 10 THROUGH 24, BOTH INCLUSIVE, IN BLOCK 9 IN COCHRAN'S THIRD ADDITION TO EDGEWATER IN THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 8, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Parcel Number(s): 14-08-121-022-0000; 14-08-121-023-0000; 14-08-121-024-0000;
14-08-121-025-0000; 14-08-121-026-0000; 14-08-121-027-0000;
14-08-121-032-0000

Street Address: 5300-5324 N Broadway, Chicago, Illinois 60640

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EXHIBIT B

Permitted Encumbrances

1. Covenants and restrictions (but omitting any such covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that said covenant (A) is exempt under Chapter 42, Section 3607 of the United States Code or (B) relates to handicap but does not discriminate against handicapped persons), contained in warranty deed from John Lewis Cochran to James C. Daly conveying Lots 23 and 24 in Block 9, Dated July 20, 1891 and recorded July 20, 1891 as document 1507055 relating to the cost of buildings to be erected on Lots 23 and 24 aforesaid

Note: Said instrument contains no provision for a forfeiture of or reversion of title in case of breach of condition

2. Covenants and restrictions (but omitting any such covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that said Covenant (A) is exempt under Chapter 42, Section 3607 of the United States Code or (B) relates to handicap but does not discriminate against handicapped persons), contained in warranty deed from John Lewis Cochran to James M. Worthington conveying Lots 21 and 22 in Block 9 dated October 16, 1891 and recorded November 24, 1891 as document 1573683 relating to the cost of buildings to be erected on said Lots 21 and 22 aforesaid

Note: Said instrument contains no provision for a forfeiture of or reversion of title in case of breach of condition

3. Easement agreement recorded April 5, 1999 as document 99324041 for Ingress and egress over Lot 10 in Favor of the Owner of Lots 5 through 9. Made by American National Bank and Trust under Trust No. 101443-01 to North Community Bank, which easement is shown on the survey by Jens K. Doe dated August 29, 2013.
4. Encroachment of the building located mainly on the Land onto the property South and adjoining by approximately 0.16 feet and 0.25 feet, and onto the property East and adjoining by approximately 0.27 feet, as shown on Plat of survey prepared by Jens K. Doe, P.C. Dated August 29, 2013.