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Illinois Anti-Predatory  
Lending Database  
Program

Certificate of Exemption



Report Mortgage Fraud  
844-768-1713



\*2208755020\*

Doc# 2208755020 Fee \$88.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 03/28/2022 11:38 AM PG: 1 OF 38

The property identified as: **PIN:** 16-29-205-011-0000

**Address:**

**Street:** 5601 W Cermak Rd

**Street line 2:**

**City:** Cicero

**State:** IL

**ZIP Code:** 60804

**Lender:** UNION BANK AND TRUST COMPANY

**Borrower:** AMPLER DEVELOPMENT LLC

**Loan / Mortgage Amount:** \$1,699,542.00

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:** C920BFB8-B775-42E7-8EAC-6908272908EB

**Execution date:** 3/4/2022

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This instrument prepared by, and after recording return to:

Valentine O'Toole, LLP  
11240 Davenport Street  
Omaha NE 68154-0125  
Attn: Michael F. Kivett

Property Address:

5601 W. Cermak  
Cicero, IL 60804

Permanent Index Numbers(s):

16-29-205-011-0000

126000099

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

## MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING STATEMENT

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING STATEMENT ("Mortgage"), effective the 4<sup>th</sup> day of March, 2022, by **AMPLER DEVELOPMENT LLC**, a Delaware limited liability company, whose mailing address is 4700 Falls of Neuse Road, Suite 400, Raleigh, North Carolina 27609 ("Mortgagor" or "Borrower") and **UNION BANK AND TRUST COMPANY**, a Nebraska state banking corporation, its successors and/or assigns, whose mailing address is 2720 South 177<sup>th</sup> Street, Omaha, NE 68130 ("Mortgagee" or "Lender"). All capitalized terms shall have the meaning given to them in the Loan Agreement (as defined below) unless otherwise defined herein.

WITNESSETH:

### ARTICLE I. - GRANTS OF SECURITY

Section 1.1 - Property Mortgaged. The Mortgagor has executed and delivered this Mortgage and does hereby mortgage and warrant, grant, bargain, convey and assign unto the Mortgagee, its successors and/or assigns, forever, all of Mortgagor's right, title and interest in and to all of the following (collectively referred to as the "Mortgaged Property"):

- A. The real property situated in the County of Cook, State of Illinois, described in Exhibit A which is attached hereto and incorporated herein by reference (the "Land"), and all estates and rights of Mortgagor in and to the Land, together with: (i) any and all buildings, structures, improvements, alterations or

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appurtenances now or hereafter situated or to be situated on the Land (collectively, the "Improvements"); and (ii) all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to (A) all streets, roads and public places, alleys, easements, rights-of-way, public or private, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, now or hereafter used in connection with or pertaining to the Land or the Improvements; (B) any strips or gores between the Land and abutting or adjacent properties; (C) all options to purchase the Land or the Improvements or any portion thereof or interest therein, and any greater estate in the Land or the Improvements; (D) all water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant), wells and well rights, well permits, springs and spring rights and reservoirs and reservoir rights appurtenant to or historically used in connection with the Land and all of Mortgagor's rights and interests under applicable state or Federal law to all water, and to use or consent to use all water, contained in or available from any part of the water-bearing formations underlying the Land, together with all associated easements and rights-of-way, any and all rights to obtain water, sewer and other services from service districts, and water stock, timber, crops and mineral interest, oil or pertaining to the Land; (E) oil, gas and other hydrocarbons and other minerals produced from or allocated to the Land and all products processed or obtained therefrom, and the proceeds thereof, and (F) all development rights and credits and air rights pertaining to the Land (the Land, Improvements and other rights, titles and interests referred to in this paragraph A being herein sometimes collectively called the "Premises");

- B. All fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies, and other articles of personal property, of every kind and character, tangible and intangible, now owned or hereafter acquired by Mortgagor, which are now or hereafter attached to or situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements or, substitutions for and additions to the foregoing (the properties referred to in this paragraph B being herein sometimes collectively called the "Accessories", all of which are hereby declared to be permanent accessions to the Land);
- C. All present or future right, title and interest of Mortgagor to: (i) plans and specifications for the Improvements, maps, surveys, studies, reports, permits, licenses, architectural, engineering, construction, management, maintenance, service and other contracts, books of account, insurance policies and other documents of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale, purchase or operation of the Mortgaged Property, (ii) rights, but not liability for any breach by Mortgagor, under all lending

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commitments (including any commitments for financing to pay any of the Secured Indebtedness as such term is defined below), insurance policies, interest rate protection agreements, contracts and agreements for the design, construction, operation or inspection of the Improvements and other contracts and general intangibles (including payment intangibles and any trademarks, trade names, goodwill and symbols) related to the Premises or the Accessories or the operation thereof, (iii) deposits and deposit accounts arising from or relating to any transactions related to the Premises or the Accessories (including Mortgagor's rights in Tenants' security deposits, deposits with respect to utility services to the Premises, and any deposits, deposit accounts or reserves hereunder or under any other Loan Documents (as such term is defined below) for taxes, insurance or otherwise), (iv) rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts (including deposit accounts), instruments, documents, notes and chattel paper arising from or by virtue of any transactions related to the Premises or the Accessories, (v) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories, (vi) all leases now or hereafter existing with respect to all or any portion of the Premises, all of the rents, issues and profits of the Mortgaged Property or arising from the use or enjoyment of all or any portion thereof, all security deposits arising from the use or enjoyment of all or any portion of the Mortgaged Property, and all utility deposits made to procure and maintain utility services to the Mortgaged Property, or any portion thereof and other benefits of the Premises and the Accessories (without derogation of any other provision herein), (vii) engineering, accounting, title, and other technical or business data concerning the Mortgaged Property, including software, which are in the possession of Mortgagor or in which Mortgagor otherwise grants a security interest, (viii) all rights (not the obligations) under or with respect to any declarations of restrictions governing or imposing rights or responsibilities on or with respect to any developments or subdivisions that are located or partially located on or with respect to the Land, as may hereafter be amended or supplemented, and (ix) all rights to maintain signage with respect to the Mortgaged Property or any business conducted thereon whether or not appurtenant to the Land;

- D. All present or future (i) proceeds (whether cash or non-cash and including payment intangibles) of or arising from the properties, rights, titles and interests referred to above, including the proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance, present and future, payable because of loss sustained to all or part of the Mortgaged Property (including premium refunds), whether or not such insurance policies are required by Mortgagee, proceeds of the taking thereof or of any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by condemnation, eminent domain or transfer in lieu thereof for public or quasi-public use under any law, proceeds arising out of any damage thereto, including

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any and all commercial tort claims, and (ii) other interests of every kind and character which Mortgagor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above and all property used or useful in connection therewith, including rights of ingress and egress and remainders, reversions and reversionary rights or interests;

- E. All interests, estates or other claims or demands, in law and in equity, which the Mortgagor now has or may hereafter acquire in the Mortgaged Property and all right, title and interest hereafter acquired by Mortgagor in any greater estate in any of the foregoing;
- F. All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property referred to above.

Section 1.2 - Purpose of Security. FOR THE PURPOSE OF SECURING, in such order or priority as Mortgagee may elect (collectively, the "Secured Indebtedness"):

- A. Payment of indebtedness in the sum of One Million Six Hundred Ninety-Nine Thousand Five Hundred Forty-Two and No/100 Dollars (\$1,699,542.00) together with interest accruing thereon at the variable non-default rate of 2.375% plus the one month LIBOR rate, adjusted monthly and the default rate of 5.00% per annum greater than the nondefault rate, according to the terms of a certain Promissory Note of even date herewith made by Mortgagor payable to the order of Mortgagee, with a Maturity Date of March 1, 2027, and any and all extensions, modifications, substitutions or renewals thereof, the terms of which are incorporated herein by reference (the "Note"), and the performance and discharge of each and every obligation of Mortgagor set forth in the Note;
- B. Payment of all other sums, with interest thereon, becoming due or payable under the provisions hereof to Mortgagee;
- C. Due, prompt and complete observance and performance of each and every obligation, covenant and agreement of Mortgagor contained herein, and in any other instrument executed by Mortgagor for the purpose of further securing the Secured Indebtedness and all other obligations of Mortgagor as evidenced by the Note and all other documents and instruments given by Mortgagor to evidence or secure repayment of the loan identified herein, including (without limitation) that certain Construction Guidance Line Loan Agreement, dated July 31, 2017, and any amendments thereto (the "Loan Agreement") (the foregoing collectively the "Loan Documents"), but expressly excluding, however, the Environmental and A.D.A. Indemnity Agreement, which is not a Loan Document for purposes of this Mortgage;
- D. All future advances under the Note (including, without limitation, all "Protective Advances" (as defined below); and

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- E. Such additional sums, with interest thereon, as may be hereafter borrowed from Mortgagee, its successors or assigns, by Mortgagor, its successors or assigns, when evidenced by another writing or writings, which are by the terms thereof secured by this Mortgage.

## ARTICLE II. - PROVISIONS RELATING TO THE MORTGAGED PROPERTY

Section 2.1 - Taxes and Governmental Claims. Mortgagor agrees to pay, or cause to be paid, any and all taxes, assessments and governmental charges whatsoever levied upon or assessed or charged against the Mortgaged Property, including assessments on appurtenant water stock, at least fifteen (15) days prior to the date such would become delinquent if not paid. Subject to the provisions hereof relating to impounds, Mortgagor shall give Mortgagee a receipt or receipts, or certified copies thereof, evidencing every such payment by Mortgagor prior to the time that such payment would become delinquent. Mortgagor shall pay and satisfy all other claims, liens and encumbrances affecting or purporting to affect the title to, or which may be or appear to be liens on, the Mortgaged Property, or any part thereof, and all costs, charges, interest and penalties on account thereof, and to give Mortgagee, upon demand, evidence satisfactory to Mortgagee of the payment or satisfaction thereof. Mortgagor covenants and agrees that in the event of the passage after the date of this Mortgage of any law of the State of Illinois, deducting from the value of real property for purposes of taxation of mortgages or debts secured by mortgages for state or local purposes, or the manner of collection of any such taxes, and imposing a tax, either directly or indirectly, on this Mortgage or the Note, the whole sum secured by this Mortgage, with interest thereon, shall, at the election of Mortgagee, become immediately due, payable and collectible on a date to be specified by not less than thirty (30) days' written notice to be given to Mortgagor by Mortgagee; PROVIDED, HOWEVER, that such election shall be ineffective if (x) Mortgagor is not prohibited by law from paying the whole of such tax in addition to all other payments required hereunder, and (y) the payment of such tax will not constitute usury or render the loan or indebtedness secured hereby wholly or partially usurious under any of the terms of the Note, this Mortgage or otherwise, or (z) if Mortgagor, prior to such specified date, does not pay such tax and Mortgagee, in a writing in all respects satisfactory to Mortgagee, in Mortgagee's sole and absolute discretion, agrees to pay any such tax when thereafter levied or assessed against the Mortgaged Property, in which event the payment, if made by Mortgagee, shall thereafter constitute a portion of the Secured Indebtedness (Mortgagee being under no duty or obligation to make any such payment).

Section 2.2 - Contest of Liens. The Mortgagor shall not be required to pay or discharge any tax, assessment, governmental charge or lien so long as the Mortgagor shall in good faith contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection thereof from, and the sale of, the Mortgaged Property, or any part thereof, to satisfy the same; provided that: (1) the Mortgagor shall have deposited with the Lender such reasonable security as may be demanded by the Lender to insure payment and prevent any sale or forfeiture of any part of the Mortgaged Property by reason of nonpayment; (2) neither the Mortgaged Property nor any part thereof or interest therein would be in any danger, deemed substantial by the Lender, of being sold, forfeited, or lost; (3) the Lender would not be in any danger, deemed substantial by the Lender, of any civil or criminal liability for failure to comply



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therewith; and (4) the Mortgagor notifies the Lender, in writing, of such contest. Any such contest shall be prosecuted with due diligence and the Mortgagor shall promptly notify the Lender after the final determination thereof and shall pay the amount of any such tax, assessment, governmental charge or lien, together with all interest, penalties and other costs payable in connection therewith.

Section 1.1 - Insurance, Damage and Destruction. The Mortgagor shall, at its sole expense, obtain for, deliver to and maintain for the benefit of the Mortgagee during the term of this Mortgage, such insurance coverage as is set forth on Exhibit B attached hereto, and such other insurance as Mortgagee may reasonably require.

The Mortgagor shall pay promptly, or cause to be paid promptly, when due, the premiums of such insurance policies and any renewals thereof. The form and substance of such policies and the companies issuing them shall be acceptable to the Mortgagee.

Mortgagor hereby assigns to the Mortgagee, as further security, all unearned premiums on any insurance policies and renewals described in this Mortgage. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the Secured Indebtedness and other sums secured hereby, all right, title and interest of the Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

In case of loss covered by policies of insurance, the Mortgagor may take such action as it may reasonably and in good faith deem appropriate to adjust and collect for any losses so long as: (i) Mortgagor is, in the reasonable opinion of the Mortgagee, diligently pursuing the adjustment and collection of any such insurance and, (ii) the loss must be settled and adjusted, or litigation must have been commenced with respect to the loss, within twelve (12) months of the loss; otherwise the Mortgagee (whether before or after the foreclosure sale) shall be authorized at its option and without the consent of Mortgagor to settle and adjust any claim arising out of such policies and collect and receipt for the proceeds payable therefrom. Any expense incurred by the Mortgagee in the adjustment and collection of insurance proceeds (including without limitation the cost of any independent appraisal of the loss or damage on behalf of Mortgagee) shall be reimbursed to the Mortgagee first out of any proceeds. Subject to the conditions in the following paragraphs, if no uncured Event of Default then exists, the net proceeds available following damage or destruction of the Mortgaged Property shall be used to restore and repair the Mortgaged Property if such proceeds are sufficient to do so. If such proceeds are insufficient to restore or repair the Mortgaged Property to its condition prior to the loss, reasonable wear and tear excepted, or an uncured Event of Default exists or if the Mortgagor is unable to satisfy the conditions in the following paragraphs, the proceeds shall be used to prepay the Secured Indebtedness.

The Mortgagor shall have the right, exercisable by written notice to Mortgagee within sixty (60) days after the occurrence of a loss described above, to apply the net proceeds of any insurance award to repair, restore, or replace the Mortgaged Property to its condition immediately prior to said loss; provided that in the opinion of Mortgagee all of the following conditions have been met:

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- A. There are sufficient proceeds available to complete the repair, restoration, or replacement.
- B. If the work is structural or if the cost of the work, estimated by Mortgagee, shall exceed One Hundred Thousand and No/100ths Dollars (\$100,000.00), plans and specifications for such work will be prepared by a licensed architect satisfactory to Mortgagee, which plans and specifications will be subject to approval by Mortgagee and an inspecting architect acceptable to Mortgagee and such architect shall certify that such repair, restoration or replacement can be completed at least six (6) months prior to the Maturity Date (as defined in the Loan Agreement).
- C. If the cost of the work exceeds \$100,000.00, Mortgagor submits the following items to Mortgagee for approval:
- i. Evidence of sufficient contractor's comprehensive general liability insurance, builder's risk insurance and worker's compensation insurance, insuring Mortgagee, as its interest may appear, all issued by insurance companies legally authorized to do business in the State of Illinois;
  - ii. A certified construction cost statement itemizing the cost of the work;
  - iii. An architectural contract in form acceptable to Mortgagee;
  - iv. A general construction contract in form acceptable to Mortgagee;
  - v. Assignment of the contracts specified in (iii) and (iv) above in favor of Mortgagee;
  - vi. Mortgagor, Mortgagee and a title insurance company acceptable to Mortgagee shall have entered into an agreement in form and substance acceptable to Mortgagee whereby all disbursements to be made from proceeds will be based upon lien waivers and completion certifications satisfactory to the Mortgagee and such title insurance company (in accordance with their custom) so as to insure that sufficient funds will be available to complete the restoration of the Mortgaged Property, and to insure that Mortgagee will continue to have full title insurance coverage including, without limitation, mechanics' lien insurance, during and after the construction period;
  - vii. Mortgagor deposits into a pledged escrow account with Mortgagee any difference between the total cost of repair, restoration or replacement and the amount of insurance proceeds.
- D. In the event that the foregoing conditions are met within 60 days after said loss occurs, Mortgagee shall make the insurance or condemnation proceeds (not in



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excess of the amount required for restoration of the Mortgaged Property) available to Mortgagor. The procedure for draws shall be as specified by Mortgagee.

- E. There shall also be no abatement, delay or diminution of any payments due or coming due under the Note as the result of such repair, delay, rebuilding, replacement, or restoration.
- F. All buildings and improvements acquired in the repair, rebuilding, replacement or restoration of the Mortgaged Property shall be deemed a part of the Mortgaged Property, encumbered by this Mortgage.
- G. Upon the completion date for such replacement or restoration, to the extent the total of funds available pursuant to this subsection are in excess of the costs incident to such repair, restoration or replacement, or if the event of damage or destruction has not significantly impaired the operation of the Mortgaged Property and no repair or restoration is required in the opinion of Mortgagor and Mortgagee, such excess funds shall be delivered to the Mortgagee for application against the Secured Indebtedness.

Proceeds payable for rental value coverage shall be endorsed and paid to the Mortgagor, but only on condition that no Event of Default exists hereunder.

Mortgagor is hereby notified, pursuant to the Illinois Collateral Protection Foreclosure Laws (815 ILCS 180/1 et. seq.), that unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage, Mortgagee may purchase the required insurance at Mortgagor's expense to protect Mortgagee's interest in the Mortgaged Property. This insurance may, but need not, protect Mortgagor's interests. The coverage that Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage. If Mortgagee purchases insurance for the Mortgaged Property, Mortgagor will be responsible for the costs of that insurance, including interest at the Default Rate and any other charges Mortgagee may impose in connection with the placement of the insurance until the effective date of the cancellation or the expiration of the insurance. The costs of the insurance shall be added to Mortgagor's total outstanding balance or obligation and shall constitute Secured Indebtedness. The costs of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

Notwithstanding the provisions of the paragraph immediately preceding, in no event shall Mortgagee be held responsible for failure to pay for any insurance required hereby or for any loss or damage growing out of a defect in any policy thereof or growing out of any failure of any insurance company to pay for any loss or damage insured against or for failure by Mortgagee to obtain such insurance or to collect the proceeds thereof.

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Section 2.3 - Condemnation. If the Mortgaged Property, or any part thereof, or any interest therein, or any rights appurtenant thereto, including, but not limited to, access, light, air and view, be condemned under any power of eminent domain or acquired for any public or quasi-public use or in the event of sale in lieu thereof, the Mortgagor shall promptly give the Mortgagee written notice thereof, generally describing the nature of such taking, damage, sale, proceedings or negotiations and the nature and extent of the taking, damage or sale which has resulted or might result therefrom, as the case may be, together with a copy of each and every document relating thereto received by Mortgagor, and Mortgagee shall have the right to participate in such proceedings or negotiations. Should any of the Mortgaged Property be taken or damaged by exercise of the power of condemnation or eminent domain, or be sold by private sale in lieu or in anticipation thereof, Mortgagor does hereby irrevocably assign, set over and transfer to Mortgagee any award, payment or other consideration for the property so taken, damaged or sold up to the amount of the then outstanding Secured Indebtedness. Mortgagee is hereby authorized to intervene in any such action in the name of Mortgagor, and is authorized to compromise and settle any such action or claim, and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Mortgagor hereby irrevocably appoints Mortgagee as its agent and attorney in fact (which appointment is coupled with an interest) to appear in and defend, on behalf of Mortgagor, any condemnation proceedings involving the Mortgaged Property and to settle and compromise any such condemnation proceeding and collect any condemnation awards and proceeds, in each case, on behalf of Mortgagor. Any reasonable expenses incurred by Mortgagee in intervening in such action or compromising and settling such action or claim, or collecting such proceeds shall be reimbursed to Mortgagee first out of the proceeds. The net proceeds of any condemnation award shall be used, at the sole option of Mortgagee, to prepay the Secured Indebtedness or restore the Mortgaged Property. If the Secured Indebtedness is repaid in full, the balance of any such net proceeds shall be paid over to the Mortgagor.

Section 2.4 - Condition of Mortgaged Property.

- A. Mortgagor agrees to properly care for and keep the Mortgaged Property in good order, condition and repair and to maintain any buildings and improvements on the Premises in good order, condition and repair. Without the prior written consent of Mortgagee, Mortgagor agrees not to cause or permit any building or improvement which constitutes a part of the Premises to be removed, demolished or structurally altered, in whole or in part, or any fixture or piece of equipment which constitutes a portion of the Mortgaged Property to be removed, damaged or destroyed, except for Permitted Equipment Transfers (as defined in the Loan Agreement) and other replacements permitted hereby. Mortgagor agrees not to cause or permit any waste to any building, improvement, fixture or equipment at any time constituting a portion of the Mortgaged Property. Mortgagor agrees to complete, restore and reconstruct in a good and workmanlike manner to the condition required hereby any improvement on the Premises which may be constructed, damaged or destroyed; not to permit any lien of mechanics or materialmen to attach to the Mortgaged Property; to comply with all laws, ordinances, regulations or governmental orders affecting the Mortgaged

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Property or requiring any alterations or improvements thereto; not to commit, suffer or permit any act with respect to the Mortgaged Property in violation of law, or of any covenants, conditions or restrictions affecting such property; to make or cause to be made from time to time all needed or proper replacements, repairs and renewals; and to do any other act or acts, all in a timely and proper manner which from the character or use of the Mortgaged Property may be reasonably necessary to protect and preserve the value of such property. Mortgagor agrees not to remove from the Premises any of the fixtures or Personal Property (as hereafter defined) included in the Mortgaged Property unless promptly replaced with like property of at least equal value.

- B. Mortgagee may, at any time and without notice to Mortgagor, enter into and upon and inspect the Mortgaged Property, in person or by agent, in such manner and to such extent as they may deem necessary, subject to the rights of tenants in possession. In the event that Mortgagor fails to maintain the Mortgaged Property in the manner specified herein, after applicable notice and cure periods, Mortgagee may, at its option, undertake such repairs or maintenance, for the account of Mortgagor, as Mortgagee deems necessary. The cost of any such repairs or maintenance undertaken by Mortgagee, together with interest thereon at the Default Rate defined and described in the Note, from the date such cost was incurred by Mortgagee until repaid to Mortgagee, shall become immediately due and payable to Mortgagee, Mortgagee shall be reimbursed therefor in accordance with the provisions hereof, and any such amounts that are not promptly reimbursed shall be added to the Secured Indebtedness. The right of Mortgagee to undertake such repairs or maintenance shall be optional, and shall in no way limit Mortgagee's right to declare a default under the Note, this Mortgage or the other Loan Documents for failure to maintain the Mortgaged Property in accordance with the covenants herein.

Section 2.5 - Alterations and Additions. Mortgagor agrees that, as to any alteration, addition, construction or improvement to be made upon the Premises, in accordance with the Loan Agreement, all plans and specifications therefor shall be approved in writing by Mortgagee prior to the commencement of work. Once commenced, all work thereunder shall be prosecuted with due diligence, and all construction thereof will be fully in accordance with the plans and specifications so approved, and will comply with all laws, ordinances or regulations made or promulgated by any governmental agency or other lawful authority and with the rules of the applicable Board of Fire Underwriters. Should Mortgagor at any time fail to comply with any governmental notice or demand alleging a failure to comply with any such plan, specification, law, ordinance or regulation, such failure shall, at Mortgagee's option, constitute a default hereunder.

Section 2.6 - Status of Title. Mortgagor represents and warrants that it is the lawful owner of the Mortgaged Property, that Mortgagor has good and marketable title to the Land and any Improvements free and clear of all liens and encumbrances whatsoever, except, however, for those matters listed as "Permitted Encumbrances" on Exhibit C hereto, and that Mortgagor has full right, power and authority to convey and mortgage the same and to execute this Mortgage. Mortgagor

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agrees to protect, preserve and defend its interest in the Mortgaged Property and title thereto; to appear and defend this Mortgage in any action or proceeding affecting or purporting to affect the Mortgaged Property, the lien of this Mortgage thereon, or any of the rights of Mortgagee hereunder; and to pay all costs and expenses incurred by the Mortgagee in or in connection with any such action or proceeding, including but not limited to Mortgagee's legal fees and costs; whether any such action or proceeding progresses to judgment and whether brought by or against Mortgagee. Mortgagee shall be reimbursed for any such costs and expenses in accordance with the provisions hereof. Mortgagee may, but shall not be under any obligation to, appear or intervene in any such action or proceeding and retain counsel therein and defend the same or otherwise take such action therein as either may, at its sole and absolute discretion, deem advisable, and may settle or compromise the same and, in that behalf and for any of such purposes, may expend and advance such sums of money as either may deem necessary, and Mortgagee shall be reimbursed therefor in accordance with the provisions hereof.

## Section 2.7 - Assignment of Leases and Rents.

- A. Mortgagor hereby irrevocably, absolutely, presently and unconditionally, grants, transfers and assigns to Mortgagee all right, title and interest of Mortgagor in and to all existing and future lease agreements, occupancy agreements and use agreements (collectively, the "Leases") relating to the Mortgaged Property or any part thereof, and to all rents, issues and profits and security deposits thereunder, and all utility deposits made to procure or maintain utility services to the Premises. This assignment is an absolute assignment, not an assignment for security only. This assignment shall extend to and cover (i) any and all extensions and renewals of existing and future Leases, (ii) any and all present and future rights against guarantors of any such obligations and to any and all rents, revenues, issues, income, receipts, profits, deposits and other amounts now or hereafter becoming due to Mortgagor or collected under the Leases (whether due for the letting of space, for services, materials or installations supplied by Mortgagor or for any other reason whatsoever), insurance proceeds, condemnation awards, damages following defaults by tenants under the Leases (the "Tenants"), cash or securities deposited by Tenants to secure performance of their obligations under the Leases, and all other extraordinary receipts and all proceeds thereof, both cash and non-cash (all of the foregoing, being referred to as the "Rents") and all rights to direct the payment of, make claim for, collect, receive and receipt for the Rents, (iii) all claims, rights, privileges and remedies on the part of Mortgagor, whether arising under the Leases or by statute or at law or in equity or otherwise, arising out of or in connection with any failure by any Tenant to pay the Rents or to perform any of its other obligations under its Lease, (iv) all rights, powers and privileges of Mortgagor to exercise any election or option or to give or receive any notice, consent, waiver or approval under or with respect to the Leases, and (v) all other claims, rights, powers, privileges and remedies of Mortgagor under or with respect to the Leases, including without limitation the right, power and privilege (but not the obligation) to do any and all acts, matters and other things that Mortgagor is entitled to do thereunder or



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with respect thereto. This assignment is given to secure payment and performance of the Note, this Mortgage, the Loan Documents, and any other agreements at any time secured by this Mortgage, and shall neither impair nor diminish the obligations of Mortgagor under the Leases nor obligate or impose upon Mortgagee any duty to perform or discharge any obligation, duty or liability under any of the Leases, or under or by reason of this assignment and the acceptance of the assignment of Leases and Rents, with all of the rights, powers, privileges and authority so created, shall not under any circumstances be deemed or construed to constitute Mortgagee a mortgagee-in-possession, or in control of, or a partner or joint venturer, with Mortgagor. Mortgagor shall and does hereby agree to indemnify and to hold Mortgagee harmless for, from and against any liability, loss or damage which it might incur under any Lease or under or by reason of this assignment and from any claims and demands whatsoever which may be asserted against Mortgagee by reason of an alleged obligation or undertaking on Mortgagee's part to perform or discharge any of the terms, covenants or agreements contained in the Leases. In further pursuance of this assignment, and not in lieu hereof, Mortgagor shall on demand give Mortgagee separate specific assignments of Rents and Leases covering some or all of the Leases, the terms of such assignments being incorporated herein by reference. Unless otherwise specified by Mortgagee in writing, all existing and future Leases for the use or occupancy of all or any part of the Mortgaged Property shall be subordinate and inferior to the lien of this Mortgage. Mortgagor shall not, without the prior written consent of Mortgagee first obtained, collect, accept or anticipate any rent from any lessee of Tenant for a period of time in excess of one (1) month prior to the due date, or accrual of such rent, whichever first occurs.

- B. Provided an Event of Default has occurred and is continuing, Mortgagee is hereby authorized to notify the property manager and all lessees and Tenants of the Mortgaged Property of the existence of any and all such assignments. Mortgagor hereby authorizes and directs the property manager and all the lessees and Tenants of the Mortgaged Property that, upon written notice from Mortgagee, all payments required under said Leases, or in any way respecting same, shall be made directly to Mortgagee as they become due. Mortgagor hereby relieves the property manager and said lessees and Tenants from any liability to Mortgagor by reason of said payments being made to Mortgagee.
- C. Mortgagee hereby grants to Mortgagor a revocable license (the "Rental License") to collect all Rents and/or payments under the Leases, but after an Event of Default and during the continuation thereof, the Rental License to collect Rents and payments shall automatically terminate and be revoked and to the extent Mortgagor collects any Rents thereafter accruing or paid, Mortgagor covenants to hold all such Rents in trust for the use and benefit of Mortgagee. After an Event of Default and during the continuation thereof, Rents shall thereupon be deemed to be cash collateral for all purposes, including without



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limitation for purposes of Section 363 of Title 11 of the United States Code, as the same may be amended.

- D. Mortgagor agrees that upon or at any time after (1) the occurrence and continuance beyond any applicable grace or cure period of an Event of Default hereunder, under the Loan Agreement, or under the Note or the other Loan Documents, or (2) the commencement of an action to foreclose this Mortgage pursuant to applicable Illinois law, or (3) the commencement of any period of redemption after foreclosure of this Mortgage, Mortgagee shall, in any such event, and at any such time, upon application to the court of competent jurisdiction in the county where the Mortgaged Property or any part thereof is located, by an action separate from the foreclosure, in the foreclosure action, or by independent action (it being understood and agreed that the existence of a foreclosure or a foreclosure action is not a prerequisite to any action for a receiver hereunder), be entitled as a matter of right, without notice (notice being hereby expressly waived) and without giving bond to Mortgagor, to the ex parte appointment of a receiver for the Mortgaged Property and for the Rents, issues, profits and all other income of every kind which shall accrue and be owing for or from the use or occupancy of the Mortgaged Property or any part thereof, whether before or after foreclosure, or during the full statutory period of redemption, if any.
- E. Mortgagee shall be entitled as a matter of right to the appointment of a receiver without regard to waste, adequacy of the security or solvency of Mortgagor. The court shall determine the amount of the bond to be posted by the receiver. The receiver, who shall be an experienced property manager, shall collect (until the Secured Indebtedness is paid in full and, in the case of a foreclosure sale, during the entire redemption period, if any) the Rents, issues, profits and all other income of any kind from the Mortgaged Property, manage the Mortgaged Property so as to prevent waste, execute leases within or beyond the period of the receivership, if approved by the court, and apply all Rents, issues, profits and other income collected by him in the following order or as otherwise set forth in the receivership order:
- i. to payment of all reasonable fees of the receiver, if any, approved by the court;
  - ii. the payment of real property taxes and assessments, insurance premiums, utilities and repayment of Tenant security deposits;
  - iii. to expenses for normal maintenance, operation and management of the Mortgaged Property, including but not limited to Mortgagee's out-of-pocket costs and all other costs and expenses which Mortgagee is entitled to pay or incur pursuant to this Mortgage and/or the other Loan Documents; and

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- iv. the balance to Mortgagee to be credited, prior to commencement of foreclosure, against the Secured Indebtedness, in such order as Mortgagee may elect, or to be credited, after commencement of foreclosure, to the amount required to be paid to effect a reinstatement prior to foreclosure sale, or to be credited, after a foreclosure sale, to any deficiency and then to the amount required to be paid to effect a redemption, if applicable, pursuant to Illinois law, with any excess to be paid to Mortgagor. The receiver shall file periodic accountings as the court determines are necessary and a final accounting at the time of his discharge. Mortgagee shall have the right, at any time and without limitation, as provided by Illinois law, to advance money to the receiver to pay any part or all of the expenses which the receiver should otherwise pay, if cash were available from the Mortgaged Property, and all sums so advanced, with interest at the Default Rate, shall be a part of the sum required to be paid by Mortgagor to cure prior to any foreclosure or by any permitted junior lien or to redeem from any foreclosure sale following such foreclosure sale.
- F. Upon the happening of any of the events set forth in paragraph D above, or during any period of redemption after foreclosure sale, and prior to the appointment of a receiver as hereinbefore provided, Mortgagee shall have the right to collect the Rents, issues, profits and other income of every kind from the Mortgaged Property and apply the same in such order and manner as Mortgagee may elect in its sole discretion. Notwithstanding anything to the contrary contained in 765 ILCS 5/31.5, Mortgagor agrees that the mere recordation of the Mortgage entitles Mortgagee immediately to collect and receive Rents upon the occurrence and during the continuance of an Event of Default, without first taking any acts of enforcement under applicable law, including providing notice to Mortgagor, filing foreclosure proceedings, or seeking the appointment of a receiver. Further, Mortgagee's right to the Rents does not depend on whether or not Mortgagee takes possession of the Mortgaged Property as permitted under this Mortgage, and enforcement hereof shall not cause Mortgagee to be deemed a mortgagee in possession, unless it elects in writing to be so deemed. It is the express intention of the Mortgagor and Mortgagee to "otherwise agree" as permitted in 765 ILCS 5/31.5 that after an Event of Default has occurred and during the continuance thereof, Mortgagee is entitled to immediately collect rents (and Mortgagor hereby agrees it will immediately pay all such rents to Mortgagee) without Mortgagee having to take any steps to enforce the assignment. For the purpose aforesaid, Mortgagee may enter and take possession of the Mortgaged Property, manage and operate the same and take any action which, in Mortgagee's judgment, is necessary or proper to conserve the value of the Mortgaged Property. Mortgagee may also take possession of, and for these purposes use, any and all of the Premises and Accessories contained in the Mortgaged Property.

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- G. The costs and expenses (including any receiver's fees and reasonable attorney's fees) incurred by Mortgagee pursuant to the powers herein contained shall be immediately reimbursed by Mortgagor to Mortgagee on demand, shall be secured hereby and shall bear interest from the date incurred at the Default Rate. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto, other than to account for any Rents actually received by Mortgagee. Mortgagee shall have the right to compromise any claim or set-off against rent which any lessee or Tenant may assert pursuant to any of the Leases, and any such compromise shall be binding and enforceable against Mortgagor, unless Mortgagee acted in a grossly negligent and reckless manner, EXCEPT, HOWEVER, nothing contained in this paragraph shall require Mortgagee to take any action to compromise or settle any such claim.
- H. Mortgagor shall not, without the prior written consent of Mortgagee first obtained, further assign the Rents, issues or profits or deposits from, or relating to, the Mortgaged Property, and any such assignment without the prior written consent of Mortgagee shall be null, void and of no force or effect.

## Section 2.8 - Personal Property Security Interest.

- A. In addition to creating a lien against the Mortgaged Property, this Mortgage constitutes a security agreement and is intended to, and Mortgagor does hereby assign and grant and create a security interest in favor of Mortgagee in all personal property including but not limited to, fixtures, equipment, leases, Rents, issues, income, profits, instruments, inventory, general intangibles, payment intangibles, investment property, chattel paper documents, letter of credit rights, supporting obligations, commercial tort claims, accounts, deposit accounts with Mortgagee of any kind, contract rights and claims included within or related to the Mortgaged Property, and in all deposits made pursuant to impound provisions hereof and all insurance policies and unearned premiums prepaid thereon, insurance proceeds (whether or not Mortgagor is required to carry such insurance by Mortgagee hereunder), and awards, payments or consideration for the taking of the Mortgaged Property, or any portion thereof, by condemnation or exercise of the power of eminent domain, or from any sale in lieu or in anticipation thereof (collectively, the "Personal Property"), at any time situated on or used in connection with the construction, maintenance, management, leasing, disposition or operation of the Mortgaged Property, to the extent that a security interest may be granted therein under the terms of the applicable Uniform Commercial Code. Mortgagor agrees to supply Mortgagee, but not more frequently than once each calendar year, with an inventory of all such property in a form acceptable to Mortgagee, from time to time, upon receipt of a written request therefor from Mortgagee.
- B. This Mortgage shall be self-operative with respect to such Personal Property, but Mortgagor shall execute and deliver on demand from Mortgagee one or more

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security agreements, financing statements and other instruments as Mortgagee may request in order to impose the lien hereof more specifically upon any such Personal Property, the terms and conditions thereof to be as required by Mortgagee, in Mortgagee's sole and absolute discretion. The security interest in the Personal Property as created hereby shall be subject to the right of Mortgagor and Tenants of Mortgagor to replace any such Personal Property from time to time so long as the replacement Personal Property has a fair market value, as determined by Mortgagee, in Mortgagee's reasonable discretion, equal to, or greater than the fair market value of the property replaced. The Personal Property may be moved about and relocated from time to time within the Mortgaged Property without the prior consent of Mortgagee first obtained.

- C. Mortgagor agrees that, all property of every nature and description, whether real or personal, covered by this Mortgage, together with all Personal Property covered by the security interest granted hereby, in the Loan Documents or as contained in other instruments executed or to be executed by Mortgagor, are encumbered as one unit, and upon default by Mortgagor under the Note secured hereby, or under this Mortgage, or any security agreement given pursuant to this paragraph, this Mortgage and such security interest, at Mortgagee's option, may be foreclosed or sold in the same proceeding, and all of the Mortgaged Property (both realty and personalty) may, at Mortgagee's option, be sold as such in one unit as a going business, subject to the provisions and requirements of applicable law. The filing of any financing statement relating to any Personal Property or rights or interest generally or specifically described herein shall not be construed to diminish or alter any of Mortgagee's rights or priorities hereunder.
- D. This Mortgage also constitutes a fixture filing pursuant to the provisions of Illinois Uniform Commercial Code with respect to those portions of the Mortgaged Property consisting of goods or property which are now or are to become fixtures relating to the Land. Mortgagor covenants and agrees that the filing of this Mortgage in the official records of the county in which the Mortgaged Property is located shall also operate from the date of such filing as a fixture filing in accordance with Illinois Uniform Commercial Code. Without the prior written consent of Mortgagee, Mortgagor shall not create or suffer to be created any other security interest in such items, including replacements and additions thereto. Upon the occurrence of an Event of Default, Mortgagee shall have the remedies of a secured party under the Illinois Uniform Commercial Code and may also invoke the other remedies provided in this Mortgage. For purposes of this fixture filing, the name of the debtor is AMPLER DEVELOPMENT LLC, a Delaware limited liability company, and the name of the secured party is UNION BANK AND TRUST COMPANY, a Nebraska state banking corporation, its successors and/or assigns. The respective addresses of the debtor and secured party are set forth on the first page of this Mortgage.

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- E. This Mortgage secures an obligation incurred for the construction of Improvements on the Land including the acquisition cost of the Land, and is a "construction mortgage" as defined in the Illinois Uniform Commercial Code.

## ARTICLE III. - GENERAL PROVISIONS

Section 3.1 - Non-Waiver. The acceptance by Mortgagee of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums secured hereby or to declare a default as herein provided. The acceptance by Mortgagee of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Mortgagor to pay the entire sum then due, and Mortgagor's failure to pay said entire sum then due shall be and continue to be a default, notwithstanding such acceptance of such amount on account, as aforesaid, and Mortgagee shall be at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Mortgagee thereafter of further sums on account, or otherwise, entitled to exercise all rights in this Mortgage conferred upon them, or either of them, upon the occurrence of a default, and the right to proceed with foreclosure shall in no way be impaired, whether any of such amounts are received prior or subsequent to such notice.

Section 3.2 - Substitute Performance by Mortgagee. Should Mortgagor fail to pay or perform when required any obligation of Mortgagor hereunder, or pursuant to the Note, the Loan Documents or any other instrument or agreement of Mortgagor in connection herewith, after applicable notice and cure period, Mortgagee may, but shall not be obligated to, without regard to the adequacy of its security and without prejudice to its right to declare a default hereunder, pay or perform the same without notice or demand to or upon Mortgagor. The payment by Mortgagee of any delinquent tax, assessment or governmental charge, or any lien or encumbrance which Mortgagee in good faith believes might be prior hereto, or any insurance premium for insurance which Mortgagor is obligated to maintain hereunder but which Mortgagee in good faith believes has not been provided, shall be conclusive between the parties as to the legality and amount so paid. Mortgagee shall be subrogated to all rights, equities and liens discharged by any such expenditure. After any default hereunder, or pursuant to the Note, the Loan Documents or any other instrument or obligation of Mortgagor in connection with the loan secured hereby, and whether or not an action is instituted to enforce any provision of this Mortgage, the Note, the Loan Documents or such other instrument or obligation of Mortgagor, Mortgagor shall pay to Mortgagee any reasonable sums incurred by Mortgagee for reasonable attorneys' fees and Mortgagee's costs to enforce this Mortgage, the Note, the Loan Documents or other instrument or obligation of Mortgagor in connection with the loan secured hereby, or to protect or enforce any of Mortgagee's rights pursuant thereto. Any amounts so paid pursuant to this Section 3.2, or the cost of such performance, together with Mortgagee's costs and all of Mortgagee's expenses incurred in connection with such payment or performance, and any amounts for which Mortgagor is specifically obligated to reimburse Mortgagee pursuant to provisions hereof, including interest on all such amounts at the Default Rate provided in the Note, from the date paid by Mortgagee until repaid to Mortgagee, shall be payable by Mortgagor to Mortgagee immediately upon notice to Mortgagor of the amount owing, without further demand, shall be secured by this Mortgage, and shall be added to the judgment in any suit brought by Mortgagee against Mortgagor hereon.



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Section 3.3 - Statute of Limitations. The pleading of any statute of limitations as a defense to any obligation secured by this Mortgage is hereby waived to the fullest extent permitted by law.

Section 3.4 - Definitions. The term "Mortgagee" means the original Mortgagee hereunder, or any future owner and holder, including pledgees, of the Note. This Mortgage in all its parts applies to and binds the successors and assigns of Mortgagor. The provisions hereof shall apply according to the context thereof and without regard to the number or gender of words or expressions used.

Section 3.5 - Amendment. No alteration or amendment of this Mortgage, the Note or the Loan Documents shall be effective unless in writing and signed by the parties sought to be charged or bound thereby. **THIS MORTGAGE TOGETHER WITH THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS OF THE PARTIES.**

Section 3.6 - Governing Law. This Mortgage has been negotiated, executed and delivered in the State of Nebraska and, except as provided in the following paragraph, shall be governed by and interpreted in accordance with the internal laws of the State of Nebraska (regardless of conflict of laws principles or the place of business, residence, location or domicile of the Mortgagor or any constituent principal thereof), except to the extent superseded by Federal law. The Mortgagor agrees that the laws or procedural rules of any jurisdiction except for Nebraska purporting to limit or affect the Mortgagee's ability to enforce its rights as set forth in this Mortgage or the other Loan Documents (including, without limitation, any fair value, security-first, security-only, one-action or anti-deficiency provisions) are not applicable to the enforcement of the Mortgagee's rights under this Mortgage or the other Loan Documents. Mortgagor intends and understands that the Mortgagee will rely upon the agreements in the foregoing sentences in making credit accommodations available to Mortgagor and specifically acknowledges that the Mortgagee may institute an action on any obligation or indebtedness of Mortgagor before selling any collateral, or bring an action to recover a deficiency following the sale of any collateral.

Notwithstanding the foregoing choice of law provision: (a) the laws of Illinois shall govern the creation, attachment, perfection and priority of liens and security interests upon real and personal property perfected by recording, filing, possession or control in the State of Illinois, as well as the procedures regarding the enforcement by Mortgagee of its foreclosure and other rights and remedies with respect to such real and personal property; and (b) provisions of Illinois law shall apply in defining the environmental and other legal requirements applicable to the Land, Improvements and fixtures encumbered hereby. However, the foregoing limited application of Illinois law and the fact that portions of the Loan Documents may include provisions drafted to conform to Illinois law are not intended in any way to derogate from the provisions set forth elsewhere in the Loan Documents designating Nebraska law as the governing law. Mortgagor specifically acknowledges and agrees that Mortgagee's right to collect a deficiency in connection

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with the sale of the Mortgaged Property shall be governed by Nebraska law, which governs the Note.

Section 3.7 - Notices. Any notice demand, consent, approval, request, or other communication or document required or permitted to be given by a party hereto to another party shall be deemed to have been given when (i) delivered personally (with written confirmation of receipt); (ii) sent by electronic communication, whether by email or telefacsimile to an email address or fax number as designated in writing by the party to whom the communication is addressed (with written confirmation of receipt), provided that a confirmation copy also is promptly mailed by certified mail, return receipt requested; (iii) received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested); or (iv) received by the addressee, if sent by certified mail, return receipt requested, and addressed as provided in the first paragraph of this Mortgage. Any party hereto may change its address for notice from time to time by delivering written notice as above provided at least ten (10) days prior to the effective date of such change.

Section 3.8 - Representations, Warranties and Covenants of Mortgagor. Mortgagor and each signatory who signs on its behalf hereby jointly and severally represent and warrant to and covenant with Mortgagee as follows.

- A. That Mortgagor is a duly formed limited liability company, validly existing, and in good standing under the laws of the State of Delaware, and with power to (i) incur the Secured Indebtedness evidenced by the Note; (ii) grant this Mortgage; and (iii) enter into the other Loan Documents and all other instruments executed and delivered to Mortgagee concurrently herewith;
- B. That this Mortgage, the Note, the other Loan Documents and all other instruments executed and delivered to Mortgagee concurrently herewith were executed in accordance with the requirements of law and in accordance with any requirements of the organizational documents of Mortgagor, and any amendments thereto;
- C. That the execution by Mortgagor of this Mortgage, the Note, the other Loan Documents, and all other instruments executed and delivered to Mortgagee concurrently herewith, and the full and complete performance by the Mortgagor of the provisions thereof, is authorized by each Mortgagor's organizational documents and by appropriate resolution of Mortgagor's members and/or managers and will not result in any breach of, or constitute a default under, or result in the creation of any lien, charge or encumbrance (other than those contained herein or in any instrument delivered to Mortgagee concurrently herewith) upon any property or assets of the Mortgagor or under the organizational documents of said Mortgagor or any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which the Mortgagor is a party or by which the Mortgagor or the Mortgaged Property (or any portion thereof) is bound;

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- D. That save and except for taxes and assessments which are to be paid as specified herein, Mortgagor will not create or suffer to permit to be created, subsequent to the date of the execution and delivery of this Mortgage, any lien or encumbrance upon the Mortgaged Property which shall be or may become superior hereto;
- E. That as of the date of execution of this Mortgage Mortgagor is the legal owner of all of the Mortgaged Property;
- F. That Mortgagor is duly authorized to do business in the State of Illinois.
- G. That the Mortgagor covenants and agrees to fully and promptly pay the principal and all interest payable under the Note when and as the same becomes due, whether at the stated maturity thereof, by acceleration or otherwise, and to fully and promptly perform all other covenants and agreements required to be performed by the Mortgagor under the Note, the Mortgage and the other Loan Documents.
- H. That Mortgagor shall pay or shall cause to be paid when due all utility charges which are incurred by Mortgagor for the benefit of the Mortgaged Property or which may become a charge or lien against the Mortgaged Property for gas, electricity, water or sewer services furnished to the Mortgaged Property and all other assessments or charges of a similar nature, whether public or private, affecting or related to the Mortgaged Property or any portion thereof.
- I. That it confirms, will abide by and is liable for all representations, warranties, covenants and agreements of the several Loan Documents.

Section 3.9 - Due on Sale or Encumbrance. In the event that without first obtaining the written consent of the Mortgagee, which consent may be granted, withheld or conditioned by Mortgagee in Mortgagee's sole discretion, there shall be any (i) transfer, sale, conveyance or lease (except leases of space in the Mortgaged Property as specifically permitted under the Loan Agreement) of all or any part of the interest of the Mortgagor in the Mortgaged Property or any part thereof, whether voluntarily or by operation of law, or (ii) transfer, sale, conveyance, pledge or encumbrance of any member or manager interest in Mortgagor or (iii) mortgage, pledge, encumbrance or lien to be outstanding against the Mortgaged Property, or any portion thereof, or any security interest to exist therein, (except as created by this Mortgage and the other documents which secure the Note, and except Permitted Encumbrances), the entire amount secured hereby shall become immediately due and payable without notice at the option of the Mortgagee and failure to exercise such option shall not constitute a waiver of the right to exercise the same in the event of any subsequent transfer, sale or conveyance. It is understood that a consent by the Mortgagee to any such transfer, conveyance or mortgage shall not be deemed a waiver of the right to require such consent to any subsequent transfer, mortgage or conveyance and that the provisions of this paragraph shall be binding upon any and all successive holders of the interest of the Mortgagor in the Mortgaged Property or any part thereof.

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Notwithstanding the foregoing provisions of this Section, Mortgagee will permit a sale or transfer of member or manager interests in Mortgagor ("Permitted Ownership Change"), if such sale or transfer (i) results from the death of a member, (ii) is made among the present members of such Mortgagor or (iii) is made to immediate family members (spouses and children) or family trusts solely for the benefit of such family members for bona fide estate planning purposes, subject to the satisfaction of the following conditions:

- A. Except for Permitted Ownership Change due to death, thirty (30) days prior written notice of such proposed transfers provided to Mortgagee, together with:
  - i. a description of the proposed sale or transfer, including a description of the nature and amounts of member or manager interests proposed to be sold or transferred and a description of who owns the remainder not being transferred;
  - ii. Documentation relating to the proposed transferee as required by Mortgagee in its reasonable discretion including, without limitation, organizational documents, certificates of existence and final ownership allocation;
  - iii. copies of the transfer documents pursuant to which the proposed sale or transfer is to be effected; and
  - iv. any additional information reasonably requested by Mortgagee regarding the proposed transfer and/or transferee.
- B. Any such proposed sale or transfer shall not be permitted to any party who or which on the date of the proposed transfer is in bankruptcy, insolvency, reorganization or any other similar court or administrative proceeding;
- C. The sale or transfer will not result in a change of control of Mortgagor, either directly or indirectly, provided, however, that any sales or transfers among the present members of such Mortgagor shall not be considered a change of control; and
- D. No Event of Default shall exist under the Loan Documents on the date of such proposed sale or transfer and no event or condition shall have occurred or be in existence as of such date which, with the passage of time, the giving of notice, or both, would constitute an Event of Default under any of the Loan Documents.
- E. The proposed transferee (and/or the shareholders, general or limited partners, members and managers of any corporation, general partnership, limited partnership or limited liability company transferee) shall guarantee the payment and performance of the Note, Mortgage and other Loan Documents in the same or similar manner as the member or manager transferor, as Mortgagee shall so require.

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## **NOTICE - THE SECURED INDEBTEDNESS IS SUBJECT TO ACCELERATION IN THE EVENT OF A TRANSFER WHICH IS PROHIBITED UNDER THIS SECTION.**

No transfer, conveyance, lease, sale or other disposition shall relieve Mortgagor from personal liability for its obligations hereunder or under the Note, whether or not the transferee assumes this Mortgage. The Mortgagee may, without notice to the Mortgagor, deal with any successor owner of all or any portion of the Mortgaged Property in the same manner as with the Mortgagor, without in any way discharging the liability of the Mortgagor hereunder or under the Note.

Section 3.10 - Offsets. No offset or claim that Mortgagor now or may in the future have against Mortgagee shall relieve Mortgagor from paying amounts required under the Note or Mortgage or performing any other obligation herein or secured hereby.

Section 3.11 - Further Assurances. Mortgagor will, upon request of Mortgagee, promptly correct any errors which may be discovered in the contents of this Mortgage or in the execution or acknowledgment hereof, and will execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by the Mortgagee to carry out more effectively the purposes of this Mortgage, to subject to the lien and security interest hereby created any of Mortgagor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest. Upon any failure by the Mortgagor to do so, the Mortgagee may make, execute, record, file, re-record or refile any and all such mortgages, financing statements, continuation statements, instruments, certificates and documents for and in the names of the Mortgagor and the Mortgagor hereby irrevocably appoints the Mortgagee (which appointment is coupled with an interest) the agent and attorney-in-fact of the Mortgagor to do so. The Mortgagor further agrees to pay to the Mortgagee, upon demand, all costs and expenses incurred by the Mortgagee in connection with the preparation, execution, recording, filing and refiling of any such documents including title insurance premiums for insuring the priority of this Mortgage or other security instrument as a valid, first and subsisting lien. However, neither a request so made by the Mortgagee nor the failure of the Mortgagee to make such a request shall be construed as a release of any of the Mortgaged Property, or any part thereof, from the lien of this Mortgage, it being understood and agreed that this covenant and any Mortgage or security instrument delivered to the Mortgagee are cumulative and given as additional security.

Section 3.12 - Severability. Should any term, provision, covenant or condition of this Mortgage be held to be void or invalid, the same shall not affect any other term, provision, covenant or condition of this Mortgage, but the remainder hereof shall be effective as though such term, provision, covenant or condition had not been contained herein. Should this instrument be or become ineffective as a Mortgage, then these presents shall be construed and enforced as a realty mortgage, with Mortgagor being the mortgagor and Mortgagee being the mortgagee.

Section 3.13 - Interest Rate. Notwithstanding any provisions herein, or in the Note secured hereby, or in the other Loan Documents or any other agreement between Mortgagor and



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Mortgagee, the total liability of Mortgagor for payments in the nature of interest shall not exceed the limits imposed by the usury laws of the State of Nebraska.

Section 3.14 - Additional Rights and Remedies. In the event Mortgagor fails or refuses to surrender possession of the Mortgaged Property after any foreclosure sale, Mortgagor shall be deemed a tenant at sufferance, subject to eviction by means of forcible entry and detainer proceedings, provided that this remedy is not exclusive or in derogation of any other right or remedy available to Mortgagee.

Section 3.15 - Time Of The Essence. Time of each payment and performance of each of Mortgagor's obligations pursuant to the Note, this Mortgage, the Loan Documents and each other instrument or obligation of Mortgagor as secured hereby is specifically declared to be of the essence. All covenants and agreements of Mortgagor contained herein or in any other Loan Document shall continue in full force and effect from and after the date hereof until indefeasible payment in full of the Secured Indebtedness.

Section 3.16 - Right to Cure Defaults. If the Mortgagor shall fail to comply with any of the terms, covenants and conditions herein with respect to the procuring of insurance, the payment of taxes, assessments and other charges, the keeping of the Mortgaged Property in repair, or any other term, covenant or condition herein contained, the Mortgagee may (but shall be under no obligation to) perform the same and/or make advances to perform the same (such advances, "Protective Advances") without notice to or demand upon the Mortgagor and without waiving or releasing any obligation or default and, where necessary, enter the Mortgaged Property for the purpose of performing any such term, covenant or condition without liability to the Mortgagor for any loss or damage caused by such entry. The Mortgagor agrees to repay all sums so advanced (including premiums for so-called "force placed" insurance coverage protecting only the interest of Mortgagee in the Mortgaged Property) upon demand, with interest from the dates such Protective Advances are made, at the Default Rate under the Note, and all sums so advanced, with interest, shall be secured hereby, but no such Protective Advance shall be deemed to relieve the Mortgagor from any default hereunder. 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 Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et. seq., as from time to time amended (the "IMFL").

Section 3.17 - Indemnification; No Abatement. The Mortgagor shall protect, indemnify, defend and save harmless the Mortgagee for, from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, charges and expenses, including, without limitation, reasonable attorneys' fees and expenses, which may be imposed upon or incurred by or asserted against the Mortgagee by reason of any accident, injury to or death of any person or loss of or damage to any property occurring on or about the Mortgaged Property or the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, during the term of this Mortgage; any use, nonuse or condition of the Mortgaged Property or the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, during the term of this Mortgage; any failure on the part of the Mortgagor to perform or comply with any of the terms of this Mortgage; performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property

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at the instance or request of the Mortgagor; or any prohibited transactions in violation of ERISA. Any amounts payable to the Mortgagee under this Section which are not paid within 10 days after written demand therefor by the Mortgagee shall bear interest at the Default Rate under the Note. In case any action, suit or proceeding is brought against the Mortgagee by reason of any such occurrence, the Mortgagor, upon the Mortgagee's request, will at the Mortgagor's expense resist and defend such action, suit or proceeding or cause the same to be resisted and defended, either by counsel designated by the Mortgagor and approved by the Mortgagee, or, where such occurrence is covered by liability insurance, by counsel designated by the insurer. The obligations of the Mortgagor under this Section shall survive any termination, satisfaction or release of this Mortgage. All sums payable by Mortgagor pursuant to this Mortgage shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction. Except as expressly provided herein, Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Mortgagor.

Section 3.18 - Debtor-Creditor Relationship. Nothing contained herein or in any Loan Document shall be deemed to create or construed to create a partnership, joint venture or any relationship other than that of debtor-creditor. Mortgagor and Mortgagee expressly disclaim any intent to create a partnership or joint venture pursuant to this Mortgage, any other Loan Document, or any other document related hereto or thereto.

Section 3.19 - Subrogation. To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Mortgaged Property, such proceeds have been or will be advanced by Mortgagee at Mortgagor's request and Mortgagee shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

Section 3.20 - Use of Loan Proceeds. Mortgagor covenants and agrees that all of the proceeds of the Loan secured by this Mortgage will be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligation secured hereby constitutes: (i) a "business loan," as that term is used in, and for all purposes of, the Illinois Interest Act, 815 ILCS 205/0.01, et seq., including Section 4(1)(c) thereof; and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of Section 205/4(1)(l) thereof.

## ARTICLE IV. - DEFAULT PROVISIONS.

Section 4.1 - Events Of Default. The occurrence of any one or more of the Events of Default defined and described in the Loan Agreement shall be an Event of Default hereunder.

Upon the occurrence of an Event of Default, the Mortgagee may at its option declare the principal of and the accrued interest on the Note, and including all sums advanced hereunder with interest at the Default Rate, to be forthwith due and payable, and thereupon the Note, including both principal and all interest accrued on the Note, and including all sums advanced hereunder and secured hereby and interest thereon, shall be and become immediately due and payable without presentment, demand, notice of intention to accelerate, notice of acceleration, or further notice of

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any kind, all of which are hereby waived. Furthermore, if any Event of Default shall have occurred and be continuing, the Mortgagee may at its option withhold further advances or advance such further sums under the Loan Agreement as the Mortgagee may in its discretion deem appropriate. Time is of the essence hereof.

Section 4.2 - Remedies Upon Default. Upon the occurrence of an Event of Default, the interest rate on the indebtedness evidenced by the Note shall be increased to the Default Rate as defined in and on such terms as are provided for in the Note. Upon the occurrence of an Event of Default, Mortgagee may (if it has not already done so pursuant hereto or pursuant to the Note), at its option, and without further notice or demand, declare all Secured Indebtedness immediately due and payable and irrespective of whether Mortgagee exercises such option, it may, at its option and in its sole discretion, without any further notice or demand to or upon Mortgagor, do any one or more of the following:

- A. Mortgagee may, either in person or by its agent, with or without bringing any action or proceeding or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon, take possession of, manage and operate the Mortgaged Property, or any part thereof, make repairs and alterations, and do any acts which Mortgagee deems proper to protect the security hereof, including but not limited to those granted Mortgagee pursuant to the other Loan Documents; and either with or without taking possession, in its own name, sue for or otherwise collect and receive Rents, issues, and profits, including those past due and unpaid, and Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, coupled with an interest, with full power of substitution for such purposes, and Mortgagee may apply the same less costs and expenses of operation and collection, including reasonable attorneys' fees and Mortgagee's costs, upon any Secured Indebtedness, and in such order as Mortgagee may determine. Upon request of Mortgagee, Mortgagor shall assemble and make available to Mortgagee at the Premises any of the Mortgaged Property which has been removed therefrom. The entering upon and taking possession of the Mortgaged Property, the collection of any Rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default theretofore or thereafter occurring, or affect any notice of default hereunder or invalidate any act done pursuant to any such notice and shall not constitute a waiver of any other remedies of Mortgagee under the Loan Documents. Notwithstanding Mortgagee's continuance in possession or receipt and application of Rents, issues or profits, Mortgagee shall be entitled to exercise every right provided for in this Mortgage or by law upon or after the occurrence of a default. Any of the actions referred to in this paragraph may be taken by Mortgagee at such time as Mortgagee is so entitled, without regard to the adequacy of any security for the Secured Indebtedness.
- B. Mortgagee shall, without regard to the adequacy of any security for the Secured Indebtedness, be entitled as a matter of right to the appointment of a receiver by any court having jurisdiction, without notice, to take immediate possession of

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and protect the Mortgaged Property, and operate the same and collect the Rents, issues and profits therefrom.

- C. Proceed to protect and enforce its rights by a suit or suits in equity or at law, either (i) for the specific performance of any term, covenant, agreement or condition contained herein or (ii) in aid of the execution of any power for the collection of the Secured Indebtedness or in the Loan Agreement or in any Loan Document or for the foreclosure of this Mortgage, or for the enforcement of any other appropriate legal or equitable remedy.
- D. Mortgagor hereby authorizes and fully empowers Mortgagee to foreclose this Mortgage by judicial proceedings in accordance with and in the manner prescribed by Illinois law, and to retain out of the proceeds arising from such sale an amount equal to the Secured Indebtedness together with (i) all such reasonable sums of money as Mortgagee shall have expended or advanced pursuant to this Mortgage or pursuant to statute together with interest thereon as herein provided and (ii) all reasonable costs and expenses of such foreclosure, including reasonable attorneys' fees; with the balance, if any, to be paid to the persons entitled thereto by law, the Mortgagor to remain liable for any deficiency, if permitted by law. Said sale may be as one tract or otherwise, at the sole option of the Mortgagee. In case of any sale of the Mortgaged Property, or any part thereof, pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Mortgage, Mortgagee, its successors and assigns, may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver and use some or all of the Secured Indebtedness in order that any such sums due to the Mortgagee from the Mortgagor may be credited as paid on the purchase price.
- E. To the extent permitted by law, Mortgagor shall not and remain liable for any deficiency remaining after sale. After default or breach, Mortgagor shall pay Mortgagee's reasonable attorneys' fees, Mortgagee's costs and expenses incurred as a result of said default or breach, and if suit is brought, all costs of suit, all of which sums shall be secured by this Mortgage. As used herein, "costs of suit" shall include but not be limited to costs of tests and analyses, architectural, engineering and other professional fees and costs, expert witness fees and costs, travel and accommodation expenses, deposition and trial transcript expenses and costs of court. Mortgagor's statutory rights of reinstatement, if any, are expressly conditioned upon Mortgagor's payment of all sums required under the applicable statute and performance of all required acts.
- F. Intentionally deleted.
- G. In addition to the rights available to a mortgagee of real property, Mortgagee shall also have all the rights, remedies and recourse available to a secured party

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under the Illinois Uniform Commercial Code including the right to proceed either (i) separately from the real estate under the provisions of the Illinois Uniform Commercial Code governing default as to any Personal Property or other property deemed non realty which may be included in the Mortgaged Property or (ii) in accordance with the procedures and remedies available pursuant to a foreclosure of real estate. If Mortgagee should elect to proceed separately as to Personal Property or other non realty, Mortgagor agrees to make said property available to Mortgagee at the Mortgaged Property.

- H. In the event Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under this Mortgage and shall thereafter elect to discontinue or abandon the same for any reason, Mortgagee shall have the unqualified right to do so and in such event Mortgagor and Mortgagee shall be restored to their former positions with respect to the Secured Indebtedness. This Mortgage, the Mortgaged Property and all rights, remedies and recourse of Mortgagee shall continue as if the same had not been invoked.
- I. In the case of any receivership, insolvency, bankruptcy, adjustment, composition or other judicial proceedings affecting the Mortgagor, its creditors or its property, the Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by the Mortgagor under the Loan Documents and any other instrument securing the Note, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by the Mortgagor after such date.
- J. Each and every power or remedy herein specifically given shall be in addition to every other power or remedy, existing or implied, now or hereafter given or existing at law or in equity, or in any other instrument given to secure the Note, and each and every power and remedy herein specifically given or otherwise so existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of one power or remedy shall not be deemed a waiver of the right to exercise at the same time or thereafter any other power or remedy. No delay or omission of the Mortgagee to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to the Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Mortgagee. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If the Mortgagee (i) grants forbearance or an extension of time for the payment of any sums secured hereby; (ii) takes other or additional security for the payment thereof;



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(iii) waives or does not exercise any right granted in the Loan Documents or any other instrument securing the Note; (iv) releases any part of the Mortgaged Property from the lien of this Mortgage or otherwise changes any of the terms of the Loan Documents, or any other instrument securing the Note; (v) consents to the filing of any map, plat or replat of the Land; (vi) consents to the granting of any easement on or over the Land; or (vii) makes or consents to any agreement changing the terms of this Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability under the Loan Documents or otherwise of the Mortgagor, or any subsequent purchaser of the Mortgaged Property or any part thereof or any maker, co-signer, endorser, surety or guarantor. No such act or omission shall preclude the Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default nor, except as otherwise expressly provided in any instrument or instruments executed by the Mortgagee, shall the lien of this Mortgage be altered thereby. No receipt of partial payment shall waive the acceleration.

- K. Subject to the provisions of this subsection, the purchase money proceeds and avails of any sale, pursuant to this Article IV of the Mortgaged Property or any part thereof, and the proceeds and avails of any remedy hereunder, shall be paid and applied as follows:
- i. First to the payment of reasonable costs and expenses of foreclosure and of such sale and of all proper expenses (including maximum attorneys' fees permitted by law, liabilities and advances incurred or made hereunder by the Mortgagee, and of all taxes, assessments or liens superior to the lien of these presents;
  - ii. Second to the payment to the Mortgagee of the amount then owing or unpaid under the Loan Documents for principal, interest and late charges, and in case any such proceeds shall be insufficient to pay the whole amount so due, then first to the payment of such interest, then to the payment of such principal and thereafter to the payment of late charges; and
  - iii. Third to the payment to the Mortgagor, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

Notwithstanding the foregoing, the proceeds of any foreclosure sale of the Mortgage Properties shall be distributed and applied in accordance with Section 15-1512 of the IMFL, in the following order of priority: first, on account of all reasonable costs and expenses incident to the foreclosure proceedings or such other remedy; second, on account of all reasonable costs and expenses in connection with securing possession of the Mortgaged Property prior to such foreclosure sale, and

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the reasonable costs and expenses incurred by or on behalf of Mortgagee in connection with holding, maintaining and preparing the Mortgaged Property for sale; third, in satisfaction of all claims in the order of priority adjudicated in the foreclosure judgment or order confirming sale; and finally, any remainder in accordance with the order of court adjudicating the foreclosure proceeding

- L. The Mortgagor hereby waives to the full extent lawfully allowed the benefit of any appraisement, moratorium, stay and extension laws now or hereafter in force. The Mortgagor hereby further waives (i) any rights available with respect to marshaling of assets so as to require the separate sales of any portion of the Mortgaged Property, or as to require the Mortgagee to exhaust its remedies against a specific portion of the Mortgaged Property before proceeding against any other, and (ii) all rights under and by virtue of the homestead exemption laws of the State of Illinois. The Mortgagor hereby expressly consents to and authorizes the sale of the Mortgaged Property as a single unit or parcel.
- M. Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate, as defined in Section 5/15-1201 of the IMFL, or residential real estate, as defined in Section 5/15-1219 of the IMFL. To the fullest extent permitted by law, Mortgagor, on behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Mortgaged Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law, hereby voluntarily and knowingly waives (i) any and all rights of redemption pursuant to Section 5/15-1601(b) of the IMFL, and (ii) any and all rights of reinstatement.
- N. With regard to the rights and remedies of Mortgagee under the IMFL:
- i. In the event that any provision in this Mortgage shall be unenforceable due to an inconsistency with any provision of the IMFL, the provisions of the IMFL shall take precedence over the inconsistent provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMFL.
  - ii. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies prior to, upon, or following the occurrence of an Event of Default that are more limited than the rights that would otherwise be vested in Mortgagee under the IMFL in the absence of said provision, Mortgagee shall be vested with the rights granted in the IMFL to the full extent permitted by law.
  - iii. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 5/15-1510 and 5/15-1512 of the IMFL, whether incurred before or after any decree or

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judgment of foreclosure shall be added to the Secured Indebtedness and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate until paid or shall be included in the judgment of foreclosure.

- iv. Mortgagor and Mortgagee shall have the benefit of all of the provisions of the IMFL, including all amendments thereto that may become effective from time to time after the date hereof. In the event any provision of the IMFL that 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.

Section 4.3 - Foreclosure Purchase. Upon any sale of the Mortgaged Property, or any part thereof, if the holder of the Note is a purchaser at such sale, it shall be entitled to use and apply all or any portion of the Secured Indebtedness then secured hereby for or in settlement or payment of all or any portion of the purchase price of the property purchased.

Section 4.4 - Remedies. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this instrument to Mortgagee, or to which either of them may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by Mortgagee, and either of them may pursue inconsistent remedies. The unenforceability of any provision in this Mortgage shall not affect the enforceability of any other provision herein. If there exists additional security for the performance of the obligations secured hereby, the holder of the Note, at its sole option, and without limiting or affecting any rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled hereunder either concurrently with whatever other rights it may have in connection with such other security or in such order as it may determine.

Section 4.5 - Waiver of Defenses.

- A. Mortgagor waives any requirements of presentment, demands for payment, notices of nonpayment or late payment, protest, notices of protest, notices of dishonor, notice of intention to accelerate, notice of acceleration and all other formalities. Mortgagor waives all rights or privileges it might otherwise have to require Mortgagee to proceed against or exhaust the assets encumbered hereby or by any other security document or instrument securing the Note or to proceed against any guarantor of such Secured Indebtedness, or to pursue any other remedy available to Mortgagee in any particular manner or order under the legal or equitable doctrine or principle of marshaling or suretyship, and further agrees that Mortgagee may proceed against any or all of the assets encumbered hereby, or by any other security document or instrument securing the Note, in the event

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of default in such order and manner as Mortgagee, in its sole discretion, may determine.

- B. All references to the Loan Documents shall also include any instrument or agreement executed by Mortgagor currently with or subsequent to the date of this Mortgage which is secured by this Mortgage in accordance with the terms hereof.

Section 4.6 - Joint and Several Liability. If there is more than one Mortgagor, the liability and obligations of the Mortgagors hereunder shall be joint and several, and the reference to "Mortgagor" shall be deemed to refer to all Mortgagors.

Section 4.7 - Maximum Principal Indebtedness. Notwithstanding anything to the contrary herein, the maximum principal indebtedness secured by this Mortgage shall at no time exceed Three Million Three Hundred Ninety-Nine Thousand Eighty-Four and No/100 Dollars (\$3,399,084.00)

Section 4.8 - WAIVER OF JURY TRIAL. MORTGAGOR HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR BY MORTGAGOR AND MORTGAGEE ARISING OUT OF OR IN ANY WAY RELATED TO THIS MORTGAGE, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN MORTGAGOR AND MORTGAGEE. THIS PROVISION IS A MATERIAL INDUCEMENT TO MORTGAGEE TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

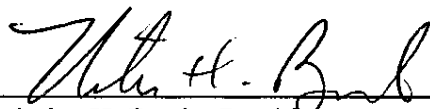
*[Signature Page Follows]*

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IN WITNESS WHEREOF, Mortgagor has executed this Mortgage effective as of the day and year set forth above.

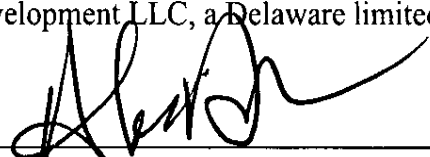
**MORTGAGOR:**

**AMPLER DEVELOPMENT LLC**, a Delaware limited liability company

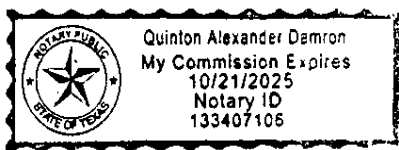
By:   
Nicholas H. Boyle, President

STATE OF Texas )  
 ) SS  
COUNTY OF Travis )

This instrument was acknowledged before me on this 2nd day of March, 2022, by Nicholas H. Boyle, President of Ampler Development LLC, a Delaware limited liability company, on behalf of the Company.

  
(Signature of Notary Public)

(Seal)





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## EXHIBIT A

### Legal Description of the Mortgaged Property

Lots 1, 2, 3, 4, 5, 6 and 7 in Block 1 in the 22ND Street Boulevard Subdivision of the Northeast 1/4 of the Northeast 1/4 of Section 29, Township 39 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

COMMONLY KNOWN AS: 5601 W. Cermak, Cicero, IL 60804

TAX NUMBER(S): 16-29-205-011-0000

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## EXHIBIT B

### Insurance Requirements

#### I. PROPERTY INSURANCE

##### A. During Construction

An ORIGINAL (or certified copy) Builder's All-Risk, Completed Value, Non-Reporting Form POLICY naming Borrower as an insured, reflecting coverage of 100% of the replacement cost of the Improvements and the Equipment, and written by a carrier approved by the Lender with a current Best's Insurance Guide rating of at least A-IX (which is authorized to do business in the state where the Project is located) that includes:

1. Mortgagee Clause (or equivalent) naming Lender.
2. 30-day notice to Lender in the event of cancellation, non-renewal or material change.
3. Replacement Cost Endorsement.
4. Stipulated Value/Agreed Amount Endorsement.
5. Flood Insurance (if applicable).
6. Collapse and Earthquake Coverage.
7. Vandalism and Malicious Mischief Coverage.

##### B. Upon Completion

An ORIGINAL (or certified copy) All-Risk Hazard Insurance POLICY naming Borrower as an insured, reflecting coverage of 100% of the replacement cost of the Improvements and the Equipment, and written by a carrier approved by Lender with a current Best's Insurance Guide Rating of at least A-IX and a current Standard and Poor claims paying ability rating of AAA (which is authorized to do business in the state where the Project is located) that includes:

1. Lender's Loss Payable Endorsement with a Severability of Interest Clause.
2. 30-day notice to Lender in the event of cancellation, non renewal or material change.
3. Replacement Cost Endorsement.
4. Stipulated Value/Agreed Amount Endorsement.
5. Boiler Explosion Coverage (if applicable).

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6. Sprinkler Leakage Coverage.
7. Vandalism and Malicious Mischief Coverage.
8. Flood Insurance (if applicable).
9. Rental Value Insurance in an amount of not less than 100% of 6-month's Rental Value of the Project. "Rental Value" shall include:
  - a. the total projected gross rental income from tenant occupancy of the Project as set forth in the Budget;
  - b. the amount of all charges which are the legal obligation of tenants and which would otherwise be the obligation of Borrower; and
  - c. the fair rental value of any portion of the Project which is occupied by Borrower.
10. Six (6) months business interruption insurance in an amount acceptable to Lender.

## II. LIABILITY INSURANCE

An ORIGINAL CERTIFICATE or other evidence (e.g. an ACORD 27 certificate) of General Comprehensive Public Liability Insurance naming Borrower as an insured, and written by a carrier approved by Lender with a current Best's Insurance Guide Rating of at least A-IX (which is authorized to do business in the state where the Project is located) that includes:

1. \$3 million combined single limit coverage.
2. Additional Insured Endorsement naming Lender.
3. 30-day notice to Lender in the event of cancellation, non-renewal or material change.

## III. WORKER'S COMPENSATION

An ORIGINAL CERTIFICATE of Worker's Compensation coverage in the statutory amount, naming Borrower as owner of the Project, written by a carrier approved by Lender, if applicable.

## IV. OTHER.

All insurance provided for in this Exhibit shall be effected under a valid and enforceable policy or policies of insurance in form and substance approved by Lender, shall be issued by insurers of recognized responsibility, which are licensed to do business in the state where the Project is located, and which are acceptable to Lender, and shall be satisfactory to Lender in all other respects.

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The certificates of insurance for property, liability and builder's risk must comply with the following.

1. ACORD 25-S forms (titled "Certificate of Insurance") for liability ARE UNACCEPTABLE unless modified to a) indicate that the insurance is in force and b) provide for 30 days written notice to the Lender of intent to cancel the insurance. This modification will occur in the bottom right of the form. The Lender does not accept standard ACORD 25-S forms as they are "issued as a matter of information only and confer no rights," and do not certify the existence of the insurance and do not promise notice to the Lender prior to cancellation.
2. An ACCORD 27 (titled "Evidence of Property insurance") relates to property insurance and is acceptable (but see 4, below). Although an ACORD 27 is not on its face to be used to evidence policies of liability insurance, it is adaptable to that purpose, and is acceptable if so adapted.
3. An ACORD 28 (titled "Evidence of Commercial Property Insurance") for property insurance is acceptable (but see 4, below).
4. ON ALL CERTIFICATES, the Lender must be designated as "additional insured," "loss payee" and "mortgagee" and not "named insured."
5. The Lender requests that it also be provided a copy of the endorsements to the policies which establish the Lender as an additional insured.

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## EXHIBIT C

### Permitted Encumbrances

None except those exceptions shown on Schedule B of the final Lender's Policy issued by Near North Title Group, as agent for Chicago Title Insurance Company, File No. IL2201221.

Property of Cook County Clerk's Office

COOK COUNTY CLERK OFFICE  
RECORDING DIVISION  
118 N. CLARK ST. ROOM 120  
CHICAGO, IL 60602-1387

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CHICAGO, IL 60602-1387