

Illinois Anti-Predatory Lending Database Program

Doc#: 2220747059 Fee: \$98.00
Karen A. Yarbrough
Cook County Clerk
Date: 07/26/2022 12:49 PM Pg: 1 of 22

Certificate of Exemption



Report Mortgage Fraud

844-768-1713

14 2205882 1 of 2

The property identified as: PIN: 10-18-320-012-0000

Address:

Street: 8840 Waukegan Road

Street line 2:

City: Morton Grove

State: IL

ZIP Code: 60056

Lender: WOODFOREST NATIONAL BANK

Borrower: AMPLER DEVELOPMENT LLC

Loan / Mortgage Amount: \$63,701,461.06

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: 905FD2FD-70E9-4AF2-807F-C7D0B22888D5

Execution date: 7/20/2022

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This instrument prepared by, and when recorded, return to:
SNELL & WILMER L.L.P.
One Arizona Center
Phoenix, Arizona 85004-2202
Attn: Jenna Bouchard, Esq.

**MORTGAGE
SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS,
FINANCING STATEMENT, AND FUTURE FILING**

By

AMPLER DEVELOPMENT LLC, a Delaware limited liability company, as Mortgagor

In favor of

WOODFOREST NATIONAL BANK, as Agent

Made and dated as of July 13, 2022 and effective as of July 20, 2022

Property Street Address: 8840 Waukegan Rd, Morton Grove, IL
PIN: 10-18-320-012-0000

**ONE OR MORE OF THE NOTES SECURED BY THIS MORTGAGE BEARS INTEREST AT A
VARIABLE RATE WHICH WILL FLUCTUATE DURING THE LOAN TERM. UPON THE
OCCURRENCE OF CERTAIN EVENTS, THE INTEREST RATE APPLICABLE TO ONE OR MORE OF
THE NOTES MAY SWITCH FROM A VARIABLE RATE TO A FIXED RATE OR TO A NEW
VARIABLE RATE OR FROM A VARIABLE RATE TO A FIXED RATE.**

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

ONE OR MORE OF THE NOTES SECURED BY THIS MORTGAGE BEARS INTEREST AT A VARIABLE RATE WHICH WILL FLUCTUATE DURING THE LOAN TERM. UPON THE OCCURRENCE OF CERTAIN EVENTS, THE INTEREST RATE APPLICABLE TO ONE OR MORE OF THE NOTES MAY SWITCH FROM A VARIABLE RATE TO A FIXED RATE OR TO A NEW VARIABLE RATE OR FROM A VARIABLE RATE TO A FIXED RATE.

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, FINANCING STATEMENT, AND FIXTURE FILING (the "Mortgage") is made as of July 13, 2022 and effective as of July 20, 2022 by AMPLER DEVELOPMENT LLC, a Delaware limited liability company ("Mortgagor") whose mailing address is 1850 Parkway Place, Suite 1100, Marietta, Georgia 30067, in favor of WOODFOREST NATIONAL BANK ("Agent"), whose mailing address is 1330 Lake Robbins, The Woodlands, Texas 77390, as mortgagee and secured party.

FOR VALUABLE CONSIDERATION, it is agreed as follows:

ARTICLE I MORTGAGE

1.1 Grant of Mortgage. Mortgagor mortgages, grants, conveys, assigns, pledges, warrants and transfers to Agent, for the benefit and security of Agent and Lenders (as defined below), a mortgage lien on and security interest in all of the Mortgaged Property (as defined below). TO HAVE AND TO HOLD the Mortgaged Property hereby mortgaged, granted, conveyed, assigned, pledged, warranted and transferred, or so intended, together with all estate, right, title and interest of Mortgagor and anyone claiming by, through or under Mortgagor, in, to, under or derived from the Mortgaged Property and all rights and appurtenances relating thereto, unto Agent, its successors and assigns forever, upon the terms, provisions and conditions set forth in this Mortgage, subject only to the Permitted Liens (as defined below). This Mortgage is being made pursuant to the terms and conditions of the Credit Agreement, of even date herewith, between Mortgagor and AD II LLC, a Delaware limited liability company, as Borrowers, Agent, and the lenders from time to time party thereto (the "Lenders") (as it may be amended, restated, supplemented, extended or renewed from time to time, the "Credit Agreement"). Capitalized terms used in this Mortgage and not otherwise defined in this Mortgage have the meanings given to those terms in the Credit Agreement.

IMPORTANT NOTICE TO LIEN CLAIMANTS:

Any lien attaching to the Mortgaged Property after the date hereof (each, a "Junior Lien") shall, to the extent permitted by applicable Law, be subject and subordinate to all of the Secured Obligations, including: (a) any debt now or hereafter owed pursuant to the terms of the Credit Agreement and other Loan Documents to Agent and/or the Lenders or any affiliate of Agent and/or the Lenders by Mortgagor or any other Loan Party, including advances (whether or not obligatory) made subsequent to the recording of this Mortgage; and (b) any modification to this Mortgage, any other Loan Document, or the Secured Obligations after the date of recording of this Mortgage, including, without limitation, increases in the amount of the Secured Obligations, increases in interest rates with respect to any Secured Obligation, and changes to the maturity date of any Secured Obligation, notwithstanding that such modification may occur after the date such Junior Lien attaches or may adversely affect or prejudice the rights of any Junior Lien claimant. Nothing herein shall be deemed an approval or consent by Agent to, or waiver of Agent's right to object to, any such Junior Lien.

1.2 The Mortgaged Property. The "Mortgaged Property" consists of all of Mortgagor's estate, right, title and interest in and to the following described property and property rights, whether now existing or hereafter acquired, including in any greater estate hereafter acquired, with references in this Mortgage to the Mortgaged Property to mean and include all or any portion of or interest of Mortgagor in any of the Mortgaged Property:

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(a) The Land and Improvements. The real property described on Exhibit 1.2, together with any and all rights and privileges appurtenant thereto (the "Land"), and all buildings and other improvements located or erected on the Land, including any and all items of property attached or affixed to such buildings or other improvements (or any portion thereof) (collectively, the "Improvements"), which Improvements are intended and agreed to be an integral part of the real property. The Land and the Improvements are referred to in this Mortgage as the "Premises." If there is more than one parcel of real property described on Exhibit 1.2, references in this Mortgage to "Land" and "Improvements" shall be to the Land and Improvements relating to and encompassing each such parcel, each of which constitutes a "Premises," and references to "Premises" shall include each such Premises.

(b) Leases and Rents. Any and all leasehold estates covering any portion of the Premises, including sublease estates, and including all cash or security deposits, advance rentals, and deposits or payments of similar nature (collectively, the "Leases"), together with any and all rents, issues, profits, damages, income and other benefits now or hereafter derived from the Premises (collectively the "Rents").

(c) Other Interests. Any and all (i) interest, estate or other claim, in law or in equity, in any of the Premises, including any greater estate in either the Land or the Improvements; (ii) easements, rights-of-way and other rights used in connection with the Premises, including all rights to the nonexclusive use of common drive entries; (iii) water rights, water stock, and claims or title to water; (iv) land lying within the right-of-way of any street, open or proposed, adjoining the Premises, and any and all sidewalks, parkways, driveways, alleys and strips and gores of land adjacent to or used in connection with the Premises; and (v) awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Premises (including awards for severance damages).

(d) UCC Collateral. The "UCC Collateral" described on Exhibit 1.2(d).

(e) Proceeds. All proceeds, both cash and non-cash, and products of any of the foregoing.

1.3 Duration of Mortgage. This Mortgage shall continue in full force and effect until such time as all indebtedness under the Note(s) executed and delivered pursuant to the Credit Agreement and all other Secured Obligations (defined below) have been fully and finally paid and performed, at which time this Mortgage shall be void, and Agent agrees to execute an instrument evidencing the satisfaction of all obligations under this Mortgage and releasing this Mortgage.

1.4 Warranty. Mortgagor represents, warrants and covenants that Mortgagor (a) is, and, as to any portion of the Mortgaged Property acquired hereafter, will upon such acquisition be, the owner of the Mortgaged Property and all legal and beneficial interests therein, including a fee simple ownership interest in the Premises, free and clear of all Liens, other than the Permitted Liens; and (b) shall remain the owner of the entire Mortgaged Property and all legal and beneficial interests therein free and clear of all Liens, other than the Permitted Liens.

ARTICLE 2 OBLIGATIONS SECURED

2.1 The Secured Obligations. This Mortgage is given to secure the following obligations (collectively, the "Secured Obligations"):

(a) Note Indebtedness. Payment of the indebtedness evidenced by the Credit Agreement in the aggregate principal amount of up to \$63,701,461.06, evidenced by the Credit Agreement and any promissory notes delivered in connection therewith (each, a "Note", with each such Note being incorporated herein by reference), with interest thereon, all as provided in the Credit Agreement, the Notes, and other Loan Documents, INCLUDING INTEREST RATE INCREASES OR DECREASES, MATURITY DATE EXTENSIONS, AND PAYMENT MODIFICATIONS (INCLUDING DEFERRALS OR ACCELERATIONS OF PRINCIPAL OR INTEREST). References herein to "Note" and "Loan" are to each such Note and related Loan.

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(b) Loan Obligations. Payment of all other Indebtedness and other sums, with interest thereon, that may be owed or arise under, and performance of all other Obligations contained in or arising under, this Mortgage, the other Loan Documents, and in any other instrument now or hereafter given to evidence or further secure payment or performance of any Obligation.

(c) Future Advances. All future principal advances, with all interest thereon, to or for the benefit of Mortgagor, made pursuant to the terms of this Mortgage or any of the other Loan Documents.

(d) Other Disbursements and Protective Advances. All disbursements and other advances made by Agent and/or the Lenders for (i) the payment of Taxes, maintenance, care, protection or insurance on or with respect to the Mortgaged Property; (ii) the discharge of Liens having priority over the lien of this Mortgage; (iii) the curing of waste of the Mortgaged Property; (iv) indemnification obligations regarding environmental liabilities associated with the Mortgaged Property; (v) service charges and expenses incurred by reason of a default hereunder, including late charges, attorneys' fees and court costs; and (vi) all other charges, disbursements, advances, costs and expenses now or hereafter incurred by Agent and/or the Lenders pursuant to any of the Loan Documents or as permitted by applicable Law, in all cases with interest thereon until paid at the Default Rate. Notwithstanding the foregoing, Agent and/or the Lenders shall have no obligation to make any disbursements or advance any sums as a result of this subsection.

(e) Obligations Generally. Payment and performance of all other Obligations, including any other obligations that are stated in this Mortgage to be included as Secured Obligations.

2.2 Priority. The Mortgaged Property shall secure all of the Secured Obligations presently or hereafter owed, and the priority of the Lien created hereby for all such Secured Obligations shall be as of the time this Mortgage is recorded. Without limiting the foregoing, all advances and disbursements pursuant to Sections 2.1(d) and 2.1(e), whether such advances are obligatory, optional or both and whether made before or after default or maturity or other similar event, shall be secured hereby to the same extent as if such advance or disbursement has been made contemporaneously with the execution hereof, even though no advance may have been made at the time of execution hereof and even though no indebtedness is outstanding at the time any advance is made.

2.3 Certain Obligations Not Secured. Notwithstanding any other provision hereof or the other Loan Documents, this Mortgage does not secure any obligations of Mortgagor or any other Loan Party in any Loan Document with respect to state and federal environmental laws, rules, regulations and permits; hazardous materials and other environmental conditions; environmental investigations; the release or threatened release of any hazardous materials; and all environmental remediation requirements.

2.4 Agency. Agent is acting as the representative and collateral agent for and on behalf of itself as Agent, the Lenders and any Affiliate thereof with respect to the Secured Obligations.

ARTICLE 3 MORTGAGOR COVENANTS

3.1 Use. Mortgagor shall permit the Mortgaged Property to be used solely for the operation of a Permitted Concept in accordance with the Credit Agreement and for no other purpose. Mortgagor shall not, without Agent's prior written consent, (a) initiate or acquiesce in a change in the zoning classification; or (b) grant, amend, modify or consent to any easement or covenants, conditions and restrictions pertaining to the Mortgaged Property.

3.2 Impositions; Right to Contest. Prior to delinquency, Mortgagor shall pay or cause to be paid the following (collectively, the "Impositions"): (a) all Taxes, water and sewer rents and charges, and charges for utility services that may be assessed, levied or imposed upon Mortgagor, the Mortgaged Property, the Loan Documents, or the Secured Obligations; and (b) all claims and demands of mechanics, laborers, materialmen and others which, if unpaid, might create a Lien on the Mortgaged Property, unless Mortgagor shall contest the amount or validity thereof as permitted in this Section. If by law any Imposition is payable in installments, Mortgagor may pay the same in installments as they become due and before any fine, penalty, interest, or cost may be added thereto for nonpayment. So long as no Default has occurred that is continuing, Mortgagor may, at its own expense, contest by

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appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity of any Imposition; provided that Mortgagor (y) shall have first demonstrated to Agent's reasonable satisfaction that such proceedings operate to prevent the sale of the Mortgaged Property to satisfy such Imposition prior to a final determination; and (z) shall have either (i) deposited with Agent adequate security for the payment of the Imposition (including any interest and penalties); or (ii) paid the Imposition in full under protest or furnished such other security or undertaking as may be permitted by applicable Law to accomplish a stay of any sale of the Mortgaged Property.

3.3 Maintenance and Repair. Mortgagor shall (or shall cause its Tenant to): (a) maintain the Mortgaged Property in good condition and repair, subject to reasonable and ordinary wear and tear, and free from actual or constructive waste; (b) operate, remodel, update and modernize the Mortgaged Property as required by the Franchise Agreement and as is otherwise prudent and reasonable; and (c) pay all operating costs of the Mortgaged Property in the ordinary course of business, including utility costs. Mortgagor shall not do, nor allow any tenant or other user of the Mortgaged Property to do, any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any Person (whether on or off the Premises), impairs or is reasonably likely to impair in any material respect the value of the Mortgaged Property, is contrary to applicable Law, or violates in any material respect any applicable covenant, condition, restriction, agreement or easement.

3.4 Alterations. Except as may be required or permitted by the Credit Agreement, Mortgagor shall not make, nor permit to be made, any alterations (including additions) to the Improvements without Agent's prior written consent, not to be unreasonably withheld or conditioned, except that Mortgagor may make nonstructural alterations costing less than \$100,000 in the aggregate at any one time without Agent's consent. Structural alterations include any alterations that would affect the foundation of the Improvements; involve the structural elements of the Improvements, such as a load-bearing wall, structural beams, columns, supports or roof; or materially affect any building systems, including electrical systems, plumbing, HVAC, and fire and safety systems. All such work shall: (a) be at the sole cost of Mortgagor (or the Tenant under the Lease); (b) be undertaken using licensed contractors; (c) be prosecuted diligently to completion; (d) be of good workmanship and materials; (e) be free of all mechanics' and materialmen's liens; and (f) comply fully with the terms of this Mortgage, the Credit Agreement, the Franchise Agreement, the Loan Documents, and all applicable Law.

3.5 Casualty and Condemnation.

(a) Takings; Continuation of Obligations. If there is a taking of all or any portion of the Mortgaged Property or the commencement of any proceedings or negotiations which might result in a taking by any lawful authority by exercise of the right of condemnation or by agreement in lieu of condemnation (a "Taking"), Mortgagor shall promptly give Agent written notice of the Taking. Mortgagor authorizes and empowers Agent, at Agent's option and in Agent's sole discretion, to settle, adjust, or compromise any claim for loss or damage in connection with any Taking or proposed Taking, and to commence, appear in and prosecute in its own name or on behalf of Mortgagor any such action or proceeding arising out of or relating to a Taking or proposed Taking.

(b) Casualty; Restoration Obligations. Mortgagor shall at all times obtain insurance as provided in the Credit Agreement. Mortgagor shall at all times bear the entire risk of any loss, theft, damage to, or destruction of, the Mortgaged Property from any cause whatsoever, including without limitation as a result of a Taking (a "Casualty"). If a Casualty occurs, whether or not covered by insurance, Mortgagor will promptly give Agent written notice thereof, describing the nature and extent thereof. No Casualty shall relieve Borrower of any of its Secured Obligations, including its obligation to make regularly scheduled payments of principal and interest pursuant to the Credit Agreement and the other Loan Documents. Promptly following the occurrence of a Casualty, other than a Total Taking (defined below), Mortgagor shall, at its expense, commence and diligently complete the repair, restoration, replacement, and rebuilding of the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to the Casualty (a "Restoration"). Mortgagor shall not be excused from Mortgagor's Restoration obligation, regardless of whether there are Proceeds (defined below) available to Mortgagor or whether any such Proceeds are sufficient in amount, and the application or release by Agent of any Proceeds shall not cure or waive any Event of Default under this Mortgage or the other Loan Documents or invalidate any act done pursuant thereto. "Total Taking" means a Taking of substantially all of the Mortgaged Property or such a portion of

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the Mortgaged Property that the remainder cannot reasonably be used for the purposes for which it was used prior to the Taking.

(c) Proceeds. All compensation, awards, damages, rights of action, and proceeds awarded to Mortgagor by reason of any such Taking or received by Mortgagor as the result of a transfer in lieu of a Taking, or with respect to any Casualty (the "Proceeds") are hereby assigned, and shall be paid, directly to Agent, and Mortgagor authorizes and directs that they be paid directly to Agent. Mortgagor agrees to execute such further assignments of the Proceeds as Agent may require. If Mortgagor receives any Proceeds, Mortgagor shall promptly pay the Proceeds to Agent, to be applied by Agent to payment of the Secured Obligations in such order as Agent, in its sole discretion, shall determine. Notwithstanding the foregoing, if no Event of Default has occurred and is continuing and if the Taking, if any, is not a Total Taking, the Proceeds, less costs, fees and expenses incurred by Agent and Mortgagor in the collection thereof, including adjuster's fees and expenses and reasonable attorneys' fees and expenses (the "Net Proceeds"), shall be made available to Mortgagor as follows: (i) if the Net Proceeds are less than \$100,000, the Net Proceeds shall be paid to Mortgagor and applied by Mortgagor to the cost of the Restoration; and (ii) if the Net Proceeds are \$100,000 or greater, the Net Proceeds shall be held and disbursed by Agent, or as Agent may from time to time direct, in Agent's reasonable discretion, as the Restoration progresses, to pay or reimburse Mortgagor for Restoration costs, upon Mortgagor's written request accompanied by evidence, reasonably satisfactory to Agent, that: (A) the Restoration is in compliance with applicable Laws and all private restrictions and requirements; (B) the amount requested has been paid or is then due and payable and is properly a part of such cost; (C) there are no Liens for labor or materials previously supplied in connection with the Restoration; (D) if the estimated cost of the Restoration exceeds the Net Proceeds (exclusive of proceeds received from Mortgagor's business income insurance), Mortgagor has deposited into an escrow reasonably satisfactory to Mortgagor such excess amount, which sum will be disbursed pursuant to escrow instructions satisfactory to Agent; and (E) the balance of such Net Proceeds, together with the funds deposited into escrow, if any, will, after making the payment requested, be sufficient to pay the balance of the Restoration costs. Upon receipt by Agent of evidence reasonably satisfactory to it that the Restoration has been completed, the cost thereof has been paid in full, and that there are no Liens for labor or materials supplied in connection therewith, the balance, if any, of such Net Proceeds shall be paid to Mortgagor. Mortgagor agrees to execute such further assignments of the Proceeds as Agent may require. To the extent that Proceeds are applied to prepay principal, no prepayment fee will be charged in connection with such prepayment.

3.6 No Discharge. Mortgagor's obligations and liabilities hereunder or under any other Loan Document shall not be released, discharged or otherwise affected by reason of: (a) any damage to, destruction of, or condemnation or similar taking of the Mortgaged Property; (b) any restriction on, or interference by any Person with, any use of any of the Mortgaged Property; (c) any title defect or encumbrance affecting the Mortgaged Property; (d) any claim that Mortgagor has or might have against Agent and/or the Lenders; (e) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Agent and/or the Lenders, or any action taken with respect to this Mortgage by any trustee or receiver of Agent, or by any court, in any such proceeding; (f) any default or failure on Agent's and/or the Lenders' part to perform or comply with any of the terms of the Loan Documents; or (g) any other act or occurrence whatsoever, whether similar or dissimilar to the foregoing.

3.7 Actions Affecting Mortgaged Property. Mortgagor shall give Agent written notice of and, unless otherwise directed in writing by Agent, shall appear in and contest any action or proceeding purporting to affect the security or priority of this Mortgage or the rights or powers of Agent and shall pay all reasonable costs and expenses (including costs of evidence of title, litigation, and reasonable attorneys' fees) in any such action or proceeding in which Agent may appear.

3.8 Actions by Agent. If Mortgagor or Borrower fails to make any payment or to do any act required hereby, Agent may, in its sole discretion, but without obligation so to do, without releasing Mortgagor from any obligation, and with only such notice to or demand upon Mortgagor as is reasonable under the circumstances, but in no event exceeding five days' prior written notice, make or do the same in such manner and to such extent as Agent may deem necessary or appropriate, including: (a) entering upon and taking possession of the Mortgaged Property and otherwise exercising its rights and remedies hereunder and under the other Loan Documents; (b) taking such

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actions and making such additions, alterations, repairs and improvements to the Mortgaged Property as Agent reasonably may consider necessary or appropriate to keep the Mortgaged Property in good condition and repair or otherwise to protect the value or security of any of the Mortgaged Property, including payment of Impositions and insurance premiums; and (c) taking such actions as Agent reasonably may consider necessary or appropriate to protect the priority, validity and enforceability of the lien of this Mortgage on the Mortgaged Property. Mortgagor shall, immediately upon demand by Agent, pay to Agent all amounts expended by Agent and/or the Lenders, including all costs and expenses reasonably incurred by Agent and/or the Lenders in connection with the exercise by Agent of the foregoing rights (including costs of evidence of title, court costs, appraisals, surveys, fees of receivers, and reasonable attorneys' fees), together with interest at the rate of 10% on such amounts from the date incurred until paid.

3.9 Prohibited Transactions. In order to induce the Agent and Lenders to make the Loan, Mortgagor agrees that, upon the occurrence of a Prohibited Transaction (as defined below) without the prior written consent of Agent, in Agent's sole discretion, Agent shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. In connection with any request for consent to a Prohibited Transaction, Mortgagor agrees to pay Agent and Lenders such fees and other amounts as Agent and Lenders may require, as consideration to Agent and Lenders in connection with, and as a condition precedent to, any such matter. As used herein, "Prohibited Transactions" means any transaction to (except as may be otherwise permitted under the Credit Agreement) (a) sell, lease, mortgage, pledge, license, assign, transfer, or otherwise encumber or dispose of any Collateral to any Person, except for (i) sales of inventory in the ordinary course of business; and (ii) so long as no Default has occurred and is continuing, sales or other dispositions of obsolete equipment consistent with past practice, so long as such items are replaced by items of equal or greater value and utility; (b) sell, mortgage, pledge, assign, transfer, or otherwise encumber or dispose of its interest in the Credit Agreement or the other Loan Documents; (c) engage in or allow a Change of Control of any Loan Party or Tenant to occur, including a change resulting from (i) direct or indirect transfers of beneficial ownership of, or the right and power to vote, stock or partnership, membership or other ownership interests, whether in one or a series of transactions; or (ii) creation or issuance of new or additional equity interests; (d) pledge, assign, or otherwise encumber or dispose of any interest in any Loan Party as collateral for any obligation of a Loan Party or any other Person; or (e) enter into any agreement to do, or which would or could result in, any of the foregoing.

3.10 No Liens or Encumbrances. Mortgagor covenants not to grant or suffer to exist, and Mortgagor covenants to pay and promptly discharge, at Mortgagor's sole cost and expense, all Liens upon the Mortgaged Property, other than Permitted Liens. Mortgagor covenants to notify Agent immediately in writing of any such Lien. Except as otherwise provided in this Mortgage with respect to Impositions, Mortgagor may contest in good faith the validity of any Lien, provided Mortgagor shall first deposit with Agent a bond or other security satisfactory to Agent in such amount as Agent shall reasonably require, but not more than 150% of the amount of the claim, and provided further that if Mortgagor loses such contest, Mortgagor will thereafter diligently proceed to cause such Lien to be removed and discharged, at Mortgagor's sole cost and expense. If Mortgagor fails to remove or discharge any Lien, then, in addition to any other right or remedy of Agent, Agent may, after only such notice to Mortgagor as may be reasonable under the then existing circumstances, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such Lien by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Mortgagor shall, immediately upon demand therefor by Agent, pay to Agent an amount equal to all amounts expended by Agent and/or the Lenders, including all costs and expenses incurred by Agent and/or the Lenders in connection with the exercise by Agent of the foregoing rights, together with interest thereon from the date of each such expenditure at the Default Rate. Such costs and expenses shall be secured by the Liens in favor of Agent, including the lien of this Mortgage, and are part of the Secured Obligations.

3.11 Periodic Appraisals. Agent may require an appraisal of the Premises, or an update to a previously provided appraisal of the Premises, indicating the present appraised fair market value thereof: (a) if Agent determines in good faith that an appraisal is required as a result of (i) any law, regulation or guideline or any change or interpretation thereof; or (ii) any central bank or other fiscal, monetary or other Government Authority having jurisdiction over Agent or its activities requesting, directing or imposing a condition upon Agent (whether or not such request, direction or condition shall have the force of law); (b) at any time after the occurrence and during the continuance of a Default; (c) as required under the Credit Agreement in connection with Approved Divestitures if

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there are five (5) or fewer Sites remaining as Collateral; (d) at any other time that Agent, in its reasonable discretion deems it appropriate. Appraisals and updates pursuant to subsections (a), (b), and (c) shall be at Mortgagor's sole cost and expense. Appraisals and updates pursuant to subsection (d) shall be at Agent's sole cost and expense; provided, however, that Agent may charge Mortgagor reasonable costs and expenses for one such appraisal or update for the Premises every two (2) calendar years during the continuance of the Mortgage. All such appraisals and updates shall comply with applicable Law, as well as Agent's internal requirements, and shall be conducted by appraisers selected and retained by or on behalf of Agent.

3.12 Flood Insurance. If Mortgagor owns the Improvements and if the Premises are located in a Special Flood Hazard Area ("SFHA") designated by the Federal Emergency Management Administration, Mortgagor shall, at its expense, obtain and maintain flood insurance under the National Flood Insurance Program ("NFIP") for the Premises meeting the insurance requirements in the Credit Agreement and providing insurance coverage sufficient to rebuild or replace the Improvements in an amount not less than the lesser of: (a) the outstanding principal balance of the Obligations secured hereby, including any prior liens on the Premises; (b) the maximum amount of coverage allowed for the type of property under the NFIP; or (c) the value of the Improvements and equipment located on the Land, but not the value of the Land itself. The policy must state the proper SFHA zone for the Premises (*i.e.*, SFHA zones beginning with "A" or "V"). Deductibles must be stated and may not exceed \$50,000. **SPECIAL NOTICE:** Notice is hereby given to Mortgagor that, if Mortgagor fails to renew or keep in effect adequate flood insurance on the Premises during the time that the NFIP mandates flood insurance coverage, federal law requires Agent to purchase the flood insurance for the Premises and authorizes Agent to charge Mortgagor the cost of premiums and fees incurred in purchasing the insurance. Any flood insurance that Agent purchases may not fully protect Mortgagor's interest and equity in the Premises and will be substantially more expensive than the insurance Mortgagor may obtain.

3.13 Granting of Easements, Etc. If no Default shall have occurred and be continuing, Mortgagor may, from time to time with respect to its interest in the Mortgaged Property and with Agent's prior written consent, not to be unreasonably withheld, delayed, conditioned or denied: (a) grant easements and other rights in the nature of easements; (b) release existing easements or other rights in the nature of easements which are for the benefit of the Mortgaged Property; (c) dedicate or transfer unimproved portions of the Mortgaged Property for road, highway or other public purposes; (d) execute petitions to have the Mortgaged Property annexed to any municipal corporation or utility district; and (e) execute and deliver to any person any instrument appropriate to confirm or effect such grants, releases, dedications and transfers.

3.14 Agent's Power. Without affecting the liability of any Person liable for the payment or performance of any of the Secured Obligations and without affecting the lien of this Mortgage upon the Mortgaged Property not then or theretofore released as security for the Secured Obligations, Agent and/or the Lenders may, from time to time and without notice: (a) release any Person so liable; (b) extend the Secured Obligations; (c) grant other indulgences; (d) release or reconvey, or cause to be released or reconveyed, at any time at Agent's option Agent's security interests in any parcel, portion or all of the Mortgaged Property; (e) take or release any other or additional security or any guaranty for any of the Secured Obligations; or (f) make adjustments or other arrangements with debtors in relation thereto.

3.15 Recording; Further Assurances. Mortgagor shall, from time to time, perform or cause to be performed any other act and shall execute or cause to be executed any and all further instruments (in recordable form) as Agent may reasonably request for carrying out the intention of, or facilitating the performance of, this Mortgage, including to maintain the priority of the Mortgage at the date of initial recording.

3.16 Representations and Warranties. Mortgagor represents and warrants to Agent and the Lenders that: (a) to the best of Mortgagor's knowledge: (i) all Improvements are, or upon completion will be, located within the boundary lines of the Land and do not and will not, upon completion, encroach upon the land of any adjacent owner; (ii) no improvements of any third Person encroach upon the Land; and (iii) no Person has any unrecorded right, title or interest in the Premises or any other part of the Mortgaged Property, whether by right of adverse possession, prescriptive easement, right of first refusal, right of first offer, option to purchase, lease, or other Contractual Obligation; and (b) there are no delinquent accounts payable or mechanics' or materialmen's Liens in favor of any materialman, laborer, or other Person in connection with labor or materials furnished to or performed

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on any of the Premises and no work has been performed or is in progress, nor have materials been supplied to any portion of the Mortgaged Property or agreements entered into for work to be performed or materials to be supplied to any portion of the Mortgaged Property prior to the date of this Mortgage.

3.17 Purchase Money Mortgage. This Mortgage is a purchase money mortgage as a portion of the Secured Obligations are being used by Mortgagor to finance the acquisition of the Mortgaged Property.

3.18 Grant of Security Interest. As further security for payment and performance of the Secured Obligations, Mortgagor grants to Agent, for the benefit of the Lenders, a lien on and security interest in and to all of the UCC Collateral, and this Mortgage constitutes a security agreement with Mortgagor, as debtor, and Agent, as secured party. Agent confirms that, notwithstanding the inclusion of general intangibles as part of the UCC Collateral and the creation, attachment and perfection of Agent's lien on and security interest in general intangibles in accordance with the provision of UCC Section 9-408(a), such creation, attachment and perfection is subject to the limitations imposed by UCC Section 9-408(d) which provide that such creation, attachment, and perfection (a) is not enforceable against Franchisor; (b) does not impose a duty or obligation on Franchisor; (c) does not require Franchisor to recognize such lien and security interest, pay or render performance to Agent, or accept payment or performance from Agent; (d) does not entitle Agent to use or assign Mortgagor's rights under the Franchise Agreement; and (e) does not entitle Agent to use, assign, possess, or have access to any trade secrets or confidential information of Franchisor.

3.19 Fixture Filing. This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Mortgaged Property and is to be filed for record in the real estate records of each county where any part of the Mortgaged Property (including said fixtures) is situated. The mailing address of Mortgagor, as debtor, is the address of Mortgagor set forth in the introductory paragraph in this Mortgage, and the address of Agent, as secured party, from which information concerning the Liens may be obtained is the address of Agent as set forth in the introductory paragraph of this Mortgage. The name of the record owner of the real property upon which the fixtures are located is [Ampler Development LLC][AD II LLC]. Such fixture filing and financing statement covers the Mortgaged Property and any proceeds or products of the Mortgaged Property.

ARTICLE 4 ASSIGNMENT OF LEASES AND RENTS

4.1 Assignment of Leases and Rents. Mortgagor assigns, transfers, and conveys to Agent for the benefit of the Lenders all of Mortgagor's estate, right, title and interest in and to the Leases and Rents and gives to and confers upon Agent the right, power and authority to collect the Rents; to give receipts, releases and satisfactions; to sue, in the name of Mortgagor or Agent, for all Rents; and to apply the Rents to the payment of the Secured Obligations in such order as Agent shall determine. Mortgagor further irrevocably appoints Agent its true and lawful attorney-in-fact, at the option of Agent at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Mortgagor or Agent, for all Rents. Mortgagor authorizes and directs the lessees, tenants and occupants to make all payments under the Leases directly to Agent upon written demand by Agent, without further consent of Mortgagor; provided, however, that Mortgagor shall have the right to collect such Rents (but not more than one month in advance unless the written approval of Agent is first obtained), and to retain and enjoy same, so long as a Default shall not have occurred. **THE ASSIGNMENT OF THE RENTS MADE IN THIS SECTION IS INTENDED TO BE AN ABSOLUTE, PRESENT ASSIGNMENT FROM MORTGAGOR TO AGENT AND NOT MERELY THE PASSING OF A SECURITY INTEREST.** Rents collected subsequent to any Event of Default shall be applied to the costs, if any, of taking possession and control of and managing the Mortgaged Property and collecting such amounts, including to pay reasonable attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Mortgaged Property, premiums on insurance policies, taxes, assessments and other charges on the Mortgaged Property, and the costs of discharging any obligation or liability of Mortgagor with respect to the Leases and to the sums secured by this Mortgage, all in such order as Agent may, in its sole discretion, determine.

4.2 Rights of Agent. Upon the occurrence and during the continuance of an Event of Default, Agent may, at any time without notice (except if required by any applicable Law), either in person, by agent or by a court-

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appointed receiver (with such receiver to have all powers and duties set forth for receivers in this Mortgage and as prescribed by applicable Law), regardless of the adequacy of Agent's security, and at Agent's sole election (without any obligation to do so), to the extent permitted by applicable Law, enter upon and take possession and control of the Mortgaged Property to perform all acts necessary and appropriate to operate and maintain the Mortgaged Property, including to execute, cancel or modify the Leases, make repairs to the Mortgaged Property, execute or terminate contracts providing for the management or maintenance of the Mortgaged Property, all on such terms as are deemed best to protect the security of this assignment. Agent or the receiver, to the extent permitted by applicable Law, shall have access to the books and records used in the operation and maintenance of the Mortgaged Property and shall be liable to account only for those Rents actually received. Agent shall not be liable to Mortgagor, anyone claiming under or through Mortgagor or anyone having an interest in the Mortgaged Property by reason of anything done or left undone by Agent hereunder, except to the extent of Agent's gross negligence or willful misconduct. Any entering upon and taking possession and control of the Mortgaged Property by Agent or the receiver and any application of Rents as provided herein shall not cure or waive any Default or invalidate any other right or remedy of Agent.

4.3 Mortgagor's Affirmative Obligations. Mortgagor shall: (a) fulfill, perform and observe in all respects each and every condition and covenant of Mortgagor contained in any Lease; (b) give prompt notice to Agent of any claim or event of default under any Lease given to or by Mortgagor, together with a complete copy or statement of any information submitted or referenced in support of such claim or event of default; (c) at the sole cost and expense of Mortgagor, enforce the performance and observance of each and every covenant and condition of any Lease to be performed or observed by any other party thereto, unless such enforcement is waived in writing by Agent; and (d) appear in and defend any action challenging the validity, enforceability or priority of the Lien created hereby or the validity or enforceability of any Lease. Mortgagor shall cause the tenant under each Lease to comply with Mortgagor's obligations contained in Article 3; provided, however, this requirement shall not relieve or release Mortgagor from any of its obligations under Article 3 or elsewhere in any of the Loan Documents.

4.4 Negative Covenants. Mortgagor shall not, without Agent's consent, in Agent's sole discretion: (a) enter into any Lease; (b) modify or amend the terms of any Lease; (c) grant any consents under any Lease, including any consent to an assignment of any Lease, a mortgaging of the leasehold estate created by any Lease or a subletting by the tenant under any Lease; (d) terminate, cancel, surrender, or accept the surrender of, any Lease, or waive or release any Person from the observance or performance of any obligation to be performed pursuant to any Lease or from liability on account of any warranty given thereunder; or (e) assign, transfer, mortgage, pledge or hypothecate any Lease or any interest therein to any party other than Agent. Any lease, modification, grant, termination, cancellation, surrender, waiver or release in violation of the foregoing provisions shall be null and void and of no force and effect.

4.5 No Merger. Unless Agent otherwise consents or elects, Mortgagor's title to the Mortgaged Property and the leasehold interest in the Mortgaged Property created by any Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Mortgagor, Agent or any other person by purchase, operation of law, or by foreclosure or sale of the Mortgaged Property pursuant hereto or otherwise.

ARTICLE 5 EVENTS OF DEFAULT AND REMEDIES

5.1 Events of Default. Each Event of Default constitutes an "Event of Default" under this Mortgage.

5.2 Remedies. Mortgagor irrevocably agrees that, upon the occurrence of an Event of Default, in addition to all other rights and remedies provided in this Mortgage, in any of the other Loan Documents, or by applicable Law, Agent may take all or any of the following actions:

(a) Acceleration. Declare all or any part of the Secured Obligations immediately due and payable without any presentment, demand, protest or notice of any kind.

(b) Right of Entry. Either in person or by 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

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upon and take possession of the Mortgaged Property and do any acts that it deems necessary or desirable to preserve the value, marketability or rentability of, to increase the income from, or to protect the security of this Mortgage with respect to, the Mortgaged Property and, with or without taking possession of the Mortgaged Property, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection (including reasonable attorneys' fees) to the Secured Obligations, all in such order as Agent may determine. The entering upon and taking possession of the Mortgaged Property, the collection of such Rents and the application thereof shall not cure or waive any default or notice of default or invalidate any act done in response to such default or pursuant to such notice of default. Notwithstanding the continuance in possession of the Mortgaged Property or the collection, receipt and application of Rents, Agent shall be entitled to exercise every right and remedy provided for in any of the Loan Documents or by law upon occurrence of any Event of Default.

(c) Foreclosure. Commence an action to foreclose the Lien of this Mortgage in a single parcel or in several parcels, appoint a receiver, or specifically enforce any of the covenants of this Mortgage.

(d) Exercise of Power of Sale. Sell Mortgagor's interest in the Mortgaged Property pursuant to the power of sale conferred in this Mortgage. If Agent elects to sell Mortgagor's interest in the Mortgaged Property by exercise of such power of sale, Agent shall have all of the rights and powers available pursuant to any applicable Law in connection therewith, including the right to credit bid at the sale, and Agent shall give such notices and otherwise conduct the sale and apply the proceeds of the sale in the manner required by law or otherwise as Agent may determine.

(e) Receiver. Obtain an order, *ex parte*, from a state or federal court appointing a receiver for (i) the business operations of Mortgagor; (ii) the Mortgaged Property; and or (iii) any or all of the assets and property rights of Mortgagor. Agent's right to obtain such an order *ex parte* from such court shall be as a matter of right and without notice to Mortgagor or anyone claiming under Mortgagor, and without regard to the then value of the Mortgaged Property or the interest of Mortgagor therein. **MORTGAGOR WAIVES ANY RIGHT TO A HEARING OR NOTICE OF HEARING PRIOR TO THE APPOINTMENT OF A RECEIVER AND IRREVOCABLY CONSENTS TO SUCH APPOINTMENT.** Mortgagor irrevocably agrees that any receiver appointed pursuant to this subsection may have all of the powers and duties of receivers in like or similar cases, including the right, with Agent's express written consent, to operate and sell all property of the receivership estate, and that such powers and duties shall be vested in the receiver until the later of (x) the date of confirmation of sale of the receivership estate, (y) the date of expiration of any redemption period, or (z) the date the receiver is discharged. Mortgagor waives any and all rights it may have to object to and explicitly consents to the appointment of a receiver as provided herein or to the receiver's operation or disposition of the receivership estate.

5.3 Personal Property. It is the express understanding and intent of the parties that as to any personal property interests subject to Article 9 of the UCC, Agent, on behalf of the Lenders, upon an Event of Default, may proceed under the UCC or may proceed as to both real and personal property interests in accordance with the provisions of this Mortgage and its rights and remedies in respect to real property, as specifically permitted under Section 9-604 of the UCC.

5.4 Agent's Exercise of Remedies. Agent shall be entitled to enforce payment and performance of any Secured Obligations and to exercise all rights and powers under this Mortgage or under any of the other Loan Documents or any laws now or hereafter in force, notwithstanding some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers contained in this Mortgage, shall prejudice or in any manner affect Agent's right to realize upon or enforce any other security now or hereafter held by Agent, it being agreed that Agent shall be entitled to enforce this Mortgage and any other security now or hereafter held by Agent in such order and manner as it may in its absolute discretion determine.

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5.5 Possession of Mortgaged Property. If, following the sale of the Mortgaged Property pursuant to the exercise of remedies under this Mortgage, Mortgagor continues to occupy any of the Mortgaged Property so sold, Mortgagor shall be deemed immediately and automatically to have become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Mortgaged Property so occupied, such rental to be due and payable daily to the purchaser. An action of unlawful detainer shall lie if the tenant holds over after a demand in writing for possession of such Mortgaged Property.

5.6 Waiver of Rights. To the maximum extent permitted under Applicable Law, Mortgagor knowingly, voluntarily, and unconditionally: (a) waives the benefit of any Applicable Law now or hereafter existing that (i) provides for any appraisal or valuation before sale of any portion of the Mortgaged Property; (ii) in any way extends the time for the enforcement of the collection of the Secured Obligations or creates or extends a moratorium or period of redemption from any sale made in furtherance of collecting the Secured Obligations; (iii) limits Lender's right to pursue a deficiency judgment after a judicial or non-judicial foreclosure or limits the amount of any deficiency judgment; or (iv) requires or permits Mortgagor or the court to determine or otherwise consider the fair market value of any of the Mortgaged Property in connection with such judicial or non-judicial foreclosure and as a potential limitation on the amount of any deficiency judgment; and (b) agrees that Mortgagor will not at any time insist upon, plea, claim or take the benefit or advantage of any law now or hereafter in force providing for any homestead exemption, and Mortgagor, for Mortgagor, Mortgagor's representatives, successors and assigns, and for any and all Persons ever claiming any interest in the Mortgaged Property, waives and releases all rights of homestead exemption. In addition, Mortgagor expressly waives and relinquishes any and all rights, remedies and defenses that Mortgagor may have or be able to assert by reason of any Applicable Law pertaining to the rights, remedies and defenses of sureties. The rights, benefits and defenses hereby waived in this Section include any and all rights, benefits and defenses which might otherwise be available to Mortgagor under the provisions of any applicable Law that might otherwise operate to limit the liability of Mortgagor under, or the enforcement of, this Mortgage, the other Loan Documents, or the Secured Obligations.

5.7 Marshaling. Agent shall not be required to marshal any present or future collateral security (including the Mortgaged Property) for, or other assurances of payment of, the Secured Obligations or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights and remedies hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, Mortgagor agrees that it will not invoke any law relating to the marshaling of collateral which might cause a delay in or impede the enforcement of Agent's rights and remedies under this Mortgage or under any of the other Loan Documents, and, to the extent that it lawfully may, Mortgagor irrevocably waives the benefits of all such laws.

5.8 Multiple Security. If (a) the Mortgaged Property consists of one or more parcels, whether or not contiguous and whether or not located in the same county, and or (b) if, in addition to this Mortgage, Agent now or hereafter holds or is the beneficiary of one or more additional mortgages, liens, deeds of trust or other security for the Secured Obligations upon other property in the state where the Premises are located (whether such property is owned by Mortgagor or others), Agent may, at its election, commence or consolidate in a single trustee's sale or foreclosure action all of the trustee's sale or foreclosure proceedings against all such collateral securing the Secured Obligations (including the Mortgaged Property), which action or sale may be brought, consolidated, or conducted in the courts of any county in which any of such collateral is located. Mortgagor irrevocably waives any objections to the commencement or consolidation of the foreclosure proceedings in a single action and any objections to the laying of venue or based on the grounds of *forum non conveniens* which it may now or hereafter have. Mortgagor agrees that if Agent is prosecuting one or more foreclosure or other proceedings against a portion of the Mortgaged Property or against any other collateral directly or indirectly securing the Secured Obligations, or if Agent obtains a judgment of foreclosure and sale or similar judgment against such collateral (or, in the case of a trustee's sale, shall have met the statutory requirements therefor with respect to such collateral), then, whether or not such proceedings are being maintained or judgments were obtained in or outside the state in which the Premises are located, Agent may commence or continue any trustee's sale or foreclosure proceedings and exercise its other remedies granted in this Mortgage against all or any part of the Mortgaged Property, and Mortgagor waives any objections to the commencement or continuation of a foreclosure of this Mortgage or exercise of any other remedies hereunder based on such other proceedings or judgments, and waives any right to seek to dismiss, stay the execution of, remove,

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transfer or consolidate either any action under this Mortgage or such other proceedings on such basis. It is expressly understood and agreed that to the fullest extent permitted by applicable Law, Agent may, at its election, cause the sale of all collateral which is the subject of a single trustee's sale or foreclosure action at either a single sale or at multiple sales conducted simultaneously and take such other measures as are appropriate in order to effect the agreement of the parties to dispose of and administer all collateral securing the Secured Obligations (directly or indirectly) in the most economical and least time-consuming manner.

5.9 Request for Notice. Mortgagor requests a copy of any notice of default and that any notice of sale under this Mortgage be mailed to it in accordance with the provisions below for the giving of notices.

ARTICLE 6 MISCELLANEOUS

6.1 Applicability of Miscellaneous Provisions. All provisions of the Credit Agreement Article entitled "Miscellaneous" apply to this Mortgage, the same as if such provisions were set forth in full in this Mortgage.

6.2 Notices. Notices pursuant to this Mortgage shall be given as provided in the Credit Agreement.

6.3 Governing Law. **THE CREATION OF THIS MORTGAGE AND THE RIGHTS AND REMEDIES OF AGENT WITH RESPECT TO THE MORTGAGED PROPERTY, AS PROVIDED HEREIN AND BY THE LAWS OF THE STATE WHERE THE PREMISES ARE LOCATED, AS WELL AS LIEN PRIORITIES, INCLUDING WITH RESPECT TO MECHANICS' AND MATERIALMEN'S LIENS, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF SUCH STATE, WITHOUT REGARD TO ITS CONFLICTS OF LAW PRINCIPLES. WITH RESPECT TO ALL OTHER PROVISIONS OF THIS MORTGAGE, THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS CONFLICTS OF LAW PRINCIPLES.**

6.4 Other Security Documents. The provisions hereof supplement the provisions of any other Loan Document that grants a Lien to Agent or that otherwise secures payment or performance of any of the Secured Obligations, and nothing contained therein shall derogate from any of the rights or remedies of Agent hereunder.

6.5 Mortgagee in Possession. Nothing contained in this Mortgage shall be construed as constituting Agent a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Property.

6.6 Modifications. This Mortgage may not be modified except in a writing executed by Mortgagor and Agent. Any agreement made by Mortgagor and Agent after the date hereof relating hereto, to the Mortgaged Property, or to any Secured Obligation shall be superior to any intervening or subordinate Lien.

6.7 Last Dollars Secured; Priority. If at any time this Mortgage shall secure less than all of the principal amount of the Secured Obligations, it is expressly agreed that any repayments of the principal amount of the Secured Obligations shall not reduce the amount of the Lien of this Mortgage until the Lien amount shall equal the principal amount of the Secured Obligations outstanding.

6.8 Binding Effect. This Mortgage shall be binding upon and inure to the benefit of Mortgagor and Agent and their respective successors and permitted assigns, including, any United States trustee, any debtor in possession or any trustee appointed from a private panel.

6.9 Business Loan: Use of Proceeds. Mortgagor certifies, covenants and agrees that all of the proceeds of the Secured Obligations 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.

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6.10 Illinois Mortgage Foreclosure Law.

(a) Rights under Foreclosure Law; Inconsistencies. It is the express intention of Mortgagor and Mortgagee that the rights, remedies, powers and authorities conferred upon Mortgagee pursuant to this Mortgage shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Illinois Mortgage Foreclosure Law (735 ILCS § 5-15-1101 et seq.) (herein called the "Foreclosure Law") and/or as otherwise permitted by applicable Law, as if they were expressly provided for herein. In the event that any provision in this Mortgage shall be inconsistent with any provision in the Foreclosure Law, the provisions of the Foreclosure Law shall take precedent over the 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 Foreclosure Law. In the event of any inconsistencies between the terms and conditions of this Section 6.10 and the other terms and conditions of this Mortgage, the terms and conditions of this Section 6.10 shall control.

(b) No Agricultural or Residential Real Estate. Mortgagor acknowledges that the Mortgaged Property does not constitute "agricultural real estate," as defined in Section 15-1201 of the Foreclosure Law, or "residential real estate," as defined in Section 15-1219 of the Foreclosure Law.

(c) Expenses. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Foreclosure Law, whether incurred before or after any decree or judgment of foreclosure, and whether provided for in this Mortgage, shall be added to the Secured Obligations.

(d) Powers Upon Possession. The powers, authorities and duties conferred upon the Mortgagee, in the event that the Mortgagee takes possession of the Mortgaged Property, and upon a receiver hereunder, shall also include all such powers, authority and duties as may be conferred upon a Mortgagee in possession or receiver under and pursuant to the Foreclosure Law. To the extent the Foreclosure Law may limit the powers, authorities and duties purportedly conferred hereby, such power, authorities and duties shall include those allowed, and be limited as proscribed by the Foreclosure Law at the time of their exercise or discharge.

(e) Waiver of Rights. MORTGAGOR KNOWINGLY AND VOLUNTARILY RELEASES AND WAIVES, ON BEHALF OF ITSELF AND ALL PERSONS OR ENTITIES NOW OR HEREAFTER INTERESTED IN THE MORTGAGED PROPERTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW INCLUDING THE FORECLOSURE LAW, (I) ALL RIGHTS UNDER ALL APPRAISEMENT, HOMESTEAD, MORATORIUM, VALUATION, EXEMPTION, STAY, EXTENSION, REDEMPTION, SINGLE ACTION, ELECTION OF REMEDIES AND MARSHALING STATUTES, LAWS OR EQUITIES NOW OR HEREAFTER EXISTING, (II) ANY AND ALL REQUIREMENTS THAT AT ANY TIME ANY ACTION MAY BE TAKEN AGAINST ANY OTHER PERSON OR ENTITY AND MORTGAGOR AGREES THAT NO DEFENSE BASED ON ANY THEREOF WILL BE ASSERTED IN ANY ACTION ENFORCING THIS INSTRUMENT, AND (III) ANY AND ALL RIGHTS TO REINSTATEMENT AND REDEMPTION AS ALLOWED UNDER SECTION 15-1601(D) OF THE FORECLOSURE LAW OR TO CURE ANY DEFAULTS, EXCEPT SUCH RIGHTS OF REINSTATEMENT AND CURE AS MAY BE EXPRESSLY PROVIDED BY THE TERMS OF THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS.

(f) Waiver of Right of Redemption. MORTGAGOR HEREBY KNOWINGLY AND VOLUNTARILY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS OF REDEMPTION FROM SALE OR OTHERWISE UNDER ANY ORDER OR DECREE OF FORECLOSURE, DISCLAIMS ANY STATUS WHICH IT MAY HAVE AS AN "OWNER OF REDEMPTION" AS THAT TERM MAY BE DEFINED IN SECTION 15-1212 OF THE FORECLOSURE LAW, PURSUANT TO RIGHTS HEREIN GRANTED, ON BEHALF OF MORTGAGOR AND ALL PERSONS BENEFICIALLY INTERESTED THEREIN, 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

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PERSONS TO THE FULLEST EXTENT PERMITTED BY THE PROVISIONS OF THE ILLINOIS STATUTES.

(g) Collateral Protection Insurance. If at any time Mortgagee is not in receipt of evidence that all insurance required hereunder or by the insurance requirements in the Credit Agreement is in full force and effect, Mortgagee shall have the right, without notice to Mortgagor, to take such action as Mortgagee deems necessary to protect its interest in the Property, including, without limitation, pursuant to the terms of the Collateral Protection Act, 815 ILCS 180-1 et seq., Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in the Mortgaged Property. This insurance may, but need not, protect Mortgagor's interests. The coverage purchased by Mortgagee may not pay any claim made by Mortgagor or any claim that is made against Mortgagor in connection with the Mortgaged Property or any required insurance policy. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained the insurance as required by this Mortgage and the insurance requirements of the Credit Agreement. If Mortgagee purchases insurance for the Mortgaged Property or insurance otherwise required by this Mortgage or the insurance requirements of the Credit Agreement, Mortgagor will be responsible for the costs of that insurance, including the insurance premium, interest and other charges imposed by Mortgagee in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance shall be paid by Mortgagor to Mortgagee within five (5) days after written notice requesting payment thereof, and until paid shall be secured by this Mortgage, shall bear interest at the Default Rate provided for in the Credit Agreement and shall be added to the Secured Obligations. The cost of the insurance may be more than the cost of insurance Mortgagor is able to obtain on its own.

6.11 Protective Advances.

(a) Without limitation on the foregoing, all advances, disbursements and expenditures made by Mortgagee in accordance with the terms of this Mortgage and the other Loan Documents, whether before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale of the Mortgaged Property, and, where applicable, after sale of the Mortgaged Property, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage and the other Loan Documents or by the Foreclosure Law (collectively, "Protective Advances"), shall have the benefit of all applicable provisions of the Foreclosure Law, including those provisions of the Foreclosure Law hereinbelow referred to:

(i) All advances by Mortgagee in accordance with the terms of this Mortgage and the other Loan Documents to: (A) preserve or maintain, repair, restore or rebuild any improvements upon the Premises; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, each as referred to in Subsection (b)(5) of Section 5-15-1302 of the Foreclosure Law;

(ii) Payments by Mortgagee of: (A) when due, installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (B) when due, installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Premises or any part thereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5-15-1505 of the Foreclosure Law;

(iii) Advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(iv) Attorneys' fees and other costs and expenses incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Sections 5-15-1504(d)(2) and 5-15-1510 of the Foreclosure Law; (B) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of this Mortgage or arising from the interest of the Mortgagee

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hereunder; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

(v) Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and confirmation hearing as referred to in Subsection (b)(1) of Section 5-15-1508 of the Foreclosure Law;

(vi) Expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5-15-1512 of the Foreclosure Law; and

(vii) Expenses incurred and expenditures made by Mortgagee for any one or more of the following: (A) if the Mortgaged Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (B) if Mortgagor's interest in the Mortgaged Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (C) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Premises imposed by Subsection (c)(1) of Section 5-15-1704 of the Foreclosure Law; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or deemed by Mortgagee to be for the benefit of the Premises or required to be made by the owner of the Premises under any grant or declaration of easements, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Premises; (F) shared or common expense assessments payable to any association or corporation in which the owner of the Premises is a member in any way affecting the Premises; (G) if any Loan is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction; and (H) pursuant to any lease or other agreement for occupancy of the Premises.

(b) All Protective Advances shall be so much additional Indebtedness secured by the Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after a Default under the terms of the Loan Documents.

(c) 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)(1) of Section 5-15-1302 of the Foreclosure Law.

(d) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Foreclosure Law, apply to and be included in:

(i) determination of the amounts of Indebtedness secured by this Mortgage at any time;

(ii) the Indebtedness found due and owing to Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional Indebtedness becoming due after such entry of judgment, it being agreed that, in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) if the right of redemption is deemed not to be waived by this Mortgage, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 15-1603 of the Foreclosure Law;

(iv) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Foreclosure Law;

(v) application of income in the hands of any receiver or Mortgagee in possession; and

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(vi) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 15-1508 and Section 15-1511 of the Foreclosure Law.

6.12 Maximum Principal Amount. The maximum indebtedness secured by this Mortgage shall not exceed \$132,400,000.

6.13 Variable Rate. Additional Interest. This Mortgage secures the full and timely payment of the Secured Obligations, including, among other things, the obligation to pay interest on the unpaid principal balance at a variable rate of interest to the extent provided in the Loan Documents.

6.14 Future Advances; Revolving Credit. Mortgagee is obligated under the terms of the Loan Documents to make advances as provided therein, and Mortgagor acknowledges and intends that all such advances, including future advances whenever hereafter made, shall be secured by the lien of this Mortgage, as provided in Section 15-1302(b)(1) of the Foreclosure Law. A portion of the Secured Obligations constitutes revolving credit indebtedness secured by a mortgage on real property, pursuant to the terms and conditions of 205 ILCS 5-5(d). Mortgagor covenants and agrees that this Mortgage shall secure the payment of all Loans and advances made under the Loan Documents as of the date hereof or at any time in the future, whether such future advances are obligatory or are to be made at the option of the Mortgagee or otherwise (but not advances or loans made more than 20 years after the date hereof), to the same extent as if such future advances were made on the date of the execution of this Mortgage and although there may be no advances made at the time of the execution of this Mortgage and although there may be no other Indebtedness outstanding under the Loan Documents at the time any advance is made. The lien of this Mortgage shall be valid as to all such obligations, including future advances, from the time of its filing of record in the office of the Recorder of Deeds of the County in which the Mortgaged Property is located. The total amount of the Secured Obligations may increase or decrease from time to time. This Mortgage shall be valid and shall have priority over all subsequent liens and encumbrances, including any statutory liens except Taxes and assessments levied on the Mortgaged Property or such other liens that shall have priority by operation of law, to the extent of the maximum amount secured by this Mortgage.

6.15 Application of Proceeds. Notwithstanding anything contained in the Mortgage to the contrary, the proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in accordance with Section 15-1512 of the Act in the following order of priority: first, on account of all reasonable costs and expenses incident to the foreclosure proceedings or such other remedy, including all such items as are mentioned in Section 6.11 above; second, on account of all reasonable costs and expenses in connection with securing possession of the Mortgaged Property prior to such foreclosure sale, and the reasonable costs and expenses incurred by or on behalf of Mortgagee in connection with holding, maintaining and preparing the Mortgaged Property for sale, including all such items as are mentioned in Section 6.11 above; third, in satisfaction of all claims in the order of priority adjudicated in the foreclosure judgment or order confirming sale; and fourth, any remainder in accordance with the order of court adjudicating the foreclosure proceeding.

6.16 Disclaimer. The relationship of Mortgagor and the Lenders under this Mortgage and the other Loan Documents is, and shall at all times remain, solely that of borrower and lender; and neither Agent nor Lenders neither undertake nor assume any responsibility or duty to Mortgagor or to any third party with respect to the Property. Notwithstanding any other provisions of this Mortgage and the other Loan Documents: (i) neither of Agent or the Lenders are, and they shall not be construed to be, a partner, joint venturer, member, alter ego, manager, controlling person or other business associate or participant of any kind of Mortgagor, and neither Agent nor Lenders intend to ever assume such status; (ii) Agent and the Lenders do not intend to ever assume any responsibility to any person for the quality, suitability, safety or condition of the Property; and (iii) neither Agent nor the Lenders shall be deemed responsible for or a participant in any acts, omissions or decisions of Mortgagor. Agent and the Lenders shall not be directly or indirectly liable or responsible for any loss, claim, cause of action, liability, indebtedness, damage or injury of any kind or character to any person or property arising from any construction on, or occupancy or use of, the Property, whether caused by or arising from: (i) any defect in any building, structure, grading, fill, landscaping, or other improvements thereon or in any on-site or off-site improvement or other facility therein or thereon; (ii) any act or omission of Mortgagor or any of Mortgagor's agents, employees, independent contractors, licensees or invitees; (iii) any accident in or on the Property or any fire, flood, or other casualty or hazard thereon; (iv) the failure of Mortgagor or any of Mortgagor's licensees, employees, invitees, agents,

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independent contractors, or other representatives to maintain the Property in a safe condition; or (v) any nuisance made or suffered on any part of the Property; provided, however, that the foregoing shall not apply to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of Agent or the Lenders, or (y) result from a claim brought by Mortgagor against Agent or the Lenders for breach in bad faith of such party's obligations hereunder or under any other Loan Document, if Mortgagor has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

6.17 EXPRESS NEGLIGENCE RULE. IT IS THE EXPRESS INTENTION OF MORTGAGOR AND MORTGAGOR HEREBY AGREES THAT EACH AND EVERY INDEMNITY SET FORTH IN THIS MORTGAGE OR IN ANY OF THE OTHER LOAN DOCUMENTS WILL APPLY TO AND FULLY PROTECT EACH INDEMNIFIED PARTY EVEN THOUGH ANY CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, CAUSES OF ACTION, JUDGMENTS, PENALTIES, COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES) THEN THE SUBJECT OF INDEMNIFICATION MAY HAVE BEEN CAUSED BY, ARISE OUT OF, OR ARE OTHERWISE ATTRIBUTABLE TO, DIRECTLY OR INDIRECTLY, THE NEGLIGENCE (EXCLUDING GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) IN WHOLE OR IN PART OF SUCH INDEMNIFIED PARTY.

6.18 NOTICE OF FINAL AGREEMENT. THIS MORTGAGE, THE LOAN AGREEMENT, AND 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 BETWEEN THE PARTIES.

[SIGNATURE PAGE FOLLOWS]

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EXECUTED effective as of the date first set forth above.

MORTGAGOR:

AMPLER DEVELOPMENT LLC, a Delaware limited liability company

By:

Christopher S. Roberge, General Counsel

STATE OF INDIANA)
) SS
COUNTY OF HAMILTON)

On July 13, 2022, before me, the undersigned, a Notary Public in and for said State personally appeared Christopher S. Roberge, known to me to be the General Counsel of AMPLER DEVELOPMENT LLC, and acknowledged to me that such individual executed the within instrument on behalf of said limited liability company.

WITNESS my hand and official seal.

Mary K. Roberge
Mary K. Roberge
Notary Public in and for said County and State

[SEAL]



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EXHIBIT 1.2 LEGAL DESCRIPTION

LOTS 8 TO 13 BOTH INCLUSIVE (EXCEPT THE EAST 17.0 FEET THEREOF) IN "THE FOREST VIEW" BEING GEORGE LANDECK'S SUBDIVISION OF THE EAST 270.0 FEET OF THE SOUTH 1010.77 FEET OF LOT 3 AND LOT 4 (EXCEPT THE NORTH 336.0 FEET) IN SUBDIVISION OF THE SOUTH 23.05 CHAINS OF THAT PART LYING WEST OF CENTER OF WAUKEGAN ROAD OF THE SOUTHWEST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Street Address: 8840 Waukegan Rd, Morton Grove, IL
PIN: 10-18-320-012-0000

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EXHIBIT 1.2(d) THE UCC COLLATERAL

The "UCC Collateral" consists of all of the following described property, whether now owned or hereafter acquired and wherever located, together with all replacements and substitutions therefor and all cash and non-cash proceeds (including insurance proceeds and any title or UCC insurance proceeds) and products thereof, and, in the case of tangible property, together with all additions, attachments, accessions, parts, equipment and repairs now or hereafter attached or affixed thereto or used in connection therewith, excluding, however, any and all "consumer goods," as defined in the UCC: All of Mortgagor's right, title, and interest in: (a) all types of property included within the term "equipment" as defined by the UCC (except vehicles, boats and airplanes), including machinery, furniture, appliances, trade fixtures, tools, and office and record keeping equipment; (b) all inventory, including all goods held for sale, raw materials, work in process and materials or supplies used or consumed in Mortgagor's business; (c) all documents; general intangibles; accounts; contract rights; chattel paper and instruments; money; securities; investment properties; deposit accounts; supporting obligations; letters of credit and letter of credit rights; commercial tort claims; and records, software and information contained in computer media (such as databases, source and object codes and information therein), together with any equipment and software to create, utilize, maintain or process any such records or data on electronic media; (d) any and all plans and specifications, designs, drawings and other matters prepared for any construction on any of the Premises or regarding any improvements to any of the Premises and any and all construction contracts, design agreements, engineering agreements and other agreements related to the construction of any such improvements; and (e) goodwill.