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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



20174088003

Doc# 20174088003 Fee \$88.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 06/22/2020 09:57 AM PG: 1 OF 26

The property identified as: **PIN:** 12-25-428-021-0000

Address:

Street: 7525 WEST GRAND AVENUE

Street line 2:

City: ELMWOOD PARK

State: IL

ZIP Code: 60707

Lender: FIRST NATIONAL BANK

Borrower: NCW KING HOLDINGS, LLC

Loan / Mortgage Amount: \$8,667,500.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 7/170 et seq. because it is commercial property.

Certificate number: 4C73A74A-4976-4A0B-BE1A-74F312D1DD97

Execution date: 6/12/2020

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Return after recording to:
Coan, Payton & Payne, LLC
Attn: Michael C. Payne
1711 61st Avenue, Suite 100
Greeley, CO 80634

When recorded return to:
First American Title Co.
2425 E Camelback Rd., Suite 300
Phoenix, AZ 85016
Attn: Kristin Brown 1001339IL2

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

(Loan No. 13000199)

This Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture Filing (this "Mortgage") is executed as of June 12, 2020, by **NCW King Holdings, LLC**, a Colorado limited liability company, whose organizational number is 20201332311 ("Borrower"), whose address is 7251 W 20 Street, L-200, Greeley, Colorado 80634, for the benefit of **First National Bank**, a nationally chartered banking association ("Lender"), whose address is 1475 N. Denver Avenue, Loveland, Colorado 80538.

RECITALS:

A. Simultaneously with the execution of this Mortgage, Borrower and Lender have executed a Loan Agreement dated of even date herewith (as amended, modified, supplemented, extended, renewed or replaced from time to time, the "Loan Agreement"), pursuant to which Lender has agreed to make a loan to Borrower in the maximum principal amount of \$8,667,500.00 (as amended, modified, supplemented, extended, renewed or replaced from time to time, the "Loan"). All terms used but not otherwise defined herein shall have the meaning provided in the Loan Agreement.

B. Borrower is required by the Loan Agreement to execute and deliver this Mortgage to, among other things, secure payment of the Indebtedness and performance of the Obligations, which Borrower is willing to do in consideration of the agreement of Lender to make the Loan to Borrower pursuant to the terms of the Loan Agreement.

AGREEMENT:

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

ARTICLE I. DEFINITIONS.

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

"Act" means the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 to 5/15-1706, as amended from time to time.

"Default Rate" means the Past Due Rate (as defined in the Note).

"Excess Interest" means any amount in excess of the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the indebtedness evidenced by the Note.

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"Federal Bankruptcy Code" means Title 11 of the United States Code (11 U.S.C. § 101, et seq.), as amended.

"Guarantor" means, collectively, Larry S. Buckendorf; LB Holdings, LLC, a Colorado limited liability company; and Vieste CW Holdings, LLC, a Delaware limited liability company.

"Indebtedness" means the sum of all principal (including present and future advances of principal), interest and all other amounts due under or secured by the Loan Documents.

"Loan Documents" means, collectively, the Loan Agreement, the Note, this Mortgage, the Environmental Indemnity Agreement, the Guaranty, any application or reimbursement agreement executed in connection with any and all other documents which Borrower, Guarantor, or any other party or parties have executed and delivered, or may hereafter execute and deliver, to evidence, secure, govern or guarantee the Obligations, or any part thereof, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

"Maturity Date" means June 12, 2025.

"Mortgaged Property" means, collectively:

- (a) the real property described in **Exhibit A**, also known by street address as 7525 West Grand Avenue, Elmwood Park, IL 60707 (the "Land");
- (b) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the "Improvements");
- (c)
 - (1) all "goods" and "equipment," as such terms are defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Borrower, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Borrower and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (the "Equipment"). Notwithstanding the foregoing, Equipment shall not include any property belonging to tenants under leases except to the extent that Borrower shall have any right or interest therein; and
 - (2) All Equipment now owned, or the ownership of which is hereafter acquired, by Borrower which is so related to the Land and Improvements forming part of the Mortgaged Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Mortgaged Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter

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attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "Fixtures"). Notwithstanding the foregoing, Fixtures shall not include any property which tenants are entitled to remove pursuant to leases except to the extent that Borrower shall have any right or interest therein.

- (d) all right, title and interest of Borrower in and to all goods, accounts, general intangibles, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper and all other personal property of any kind or character, including such items of personal property as presently or hereafter defined in the UCC, now owned or hereafter acquired by Borrower and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights, software, trademarks, goodwill, promissory notes, electronic and tangible chattel paper, payment intangibles, documents, trade names, licenses and/or franchise agreements, rights of Borrower under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Borrower with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, commercial tort claims arising from the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property, all accounts arising from the operation of the Mortgaged Property (the "Personalty");
- (e) all reserves, escrows or impounds required under the Loan Agreement and all deposit accounts (including accounts holding security deposits) maintained by Borrower with respect to the Mortgaged Property;

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- (f) all right, title, and interest of Borrower in all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the "Plans");
- (g) all right, title, and interest of Borrower in all leases, subleases, licenses, concessions, occupancy agreements, rental contracts, or other agreements (written or oral) now or hereafter existing relating to the use or occupancy of all or any part of the Mortgaged Property, together with all guarantees, letters of credit and other credit support, modifications, extensions and renewals thereof (whether before or after the filing by or against Borrower of any petition of relief under the Federal Bankruptcy Code) and all related security and other deposits (the "Leases") and all of Borrower's claims and rights (the "Bankruptcy Claims") to the payment of damages arising from any rejection by a lessee of any Lease under the Federal Bankruptcy Code;
- (h) all right, title, and interest of Borrower in all of the rents, revenues, liquidated damages payable upon default under the Leases, issues, income, proceeds, profits, and all other payments of any kind under the Leases for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Federal Bankruptcy Code (the "Rents");
- (i) all right, title, and interest of Borrower in all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, franchise agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "Property Agreements");
- (j) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Borrower in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof;
- (k) all insurance policies (regardless of whether required by Lender), unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Borrower;
- (l) all right, title, and interest of Borrower in all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Mortgaged Property;
- (m) all right, title, and interest of Borrower in all tradenames, trademarks, service marks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Mortgaged Property;
- (n) all of Borrower's right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty; and

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- (o) all accessions, replacements and substitutions for any of the foregoing and all cash and non-cash proceeds, products, royalties, and benefits thereof.

As used in this Mortgage, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

"Note" means that certain Promissory Note dated of even date with this Mortgage executed by Borrower, payable to the order of Lender, in the stated principal amount of 8,667,500.00 and due on the Maturity Date, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Obligations" means all present and future debts, obligations and liabilities of Borrower to Lender arising pursuant to, or on account of, the provisions of the Loan Agreement, the Note, this Mortgage or any of the other Loan Documents, including, without limitation, the obligation to: (a) pay all principal, interest, late charges, prepayment premiums (if any) and other amounts due at any time under the Note; (b) pay all expenses, indemnification payments, fees and other amounts due at any time under this Mortgage or any of the other Loan Documents, together with interest thereon as provided in this Mortgage or such Loan Document; (c) perform, observe and comply with all of the terms, covenants and conditions, expressed or implied, which Borrower is required to perform, observe or comply with pursuant to the terms of the Mortgage or any of the other Loan Documents.

"Permitted Encumbrances" means the outstanding liens, easements, restrictions, security interests and other exceptions to title set forth in the policy of title insurance insuring the lien of this Mortgage, together with the liens and security interests in favor of Lender created by the Loan Documents, none of which, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by this Mortgage, materially and adversely affect the value of the Mortgaged Property, impair the use or operations of the Mortgaged Property or impair Borrower's ability to pay its obligations in a timely manner.

"State" means the State of Illinois.

"UCC" means the Uniform Commercial Code of the State in effect from time to time or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than the State, then, as to the matter in question, the Uniform Commercial Code in effect in that state from time to time.

Section 1.2. Other Terms. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Loan Agreement.

ARTICLE II. GRANT.

To secure the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, Borrower hereby GRANTS, BARGAINS, SELLS, ALIENS, CONVEYS, CONFIRMS, REMISES AND RELEASES to Lender the Mortgaged Property, subject, however, to the Permitted Encumbrances; TO HAVE AND TO HOLD the Mortgaged Property to Lender, its successors and assigns, and Borrower does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Lender and its successors, substitutes

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and assigns; the Borrower hereby RELEASES AND WAIVES all rights under and by virtue of the homestead exemption laws of the State of Illinois.

ARTICLE III. WARRANTIES, REPRESENTATIONS AND COVENANTS.

Borrower warrants, represents and covenants to Lender as follows:

Section 3.1. Title to Mortgaged Property and Lien of this Instrument. Borrower owns the Mortgaged Property free and clear of any liens, claims or interests, except the Permitted Encumbrances. This Mortgage creates valid, enforceable first priority liens and security interests against the Mortgaged Property. Borrower warrants and represents that Borrower has good, marketable and insurable title to the Mortgaged Property; has the full power, authority and right to execute, deliver and perform its obligations under this Mortgage; that the execution and delivery of this Mortgage and the Loan Documents has been authorized by Borrower; and that there is no provision in any document relating to Borrower that evidences or establishes the existence of Borrower requiring further consent for such action by any other entity or person.

Section 3.2. First Lien Status. Borrower shall preserve, protect, warrant and defend, at Borrower's sole cost and expense, the first lien and security interest status of this Mortgage and the other Loan Documents. If any lien or security interest other than the Permitted Encumbrances is asserted against the Mortgaged Property, Borrower shall promptly, and at its expense, (a) give Lender a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or, in Lender's discretion, provide a bond or other security satisfactory to Lender for the payment of such claim.

Section 3.3. Payment and Performance. Subject to all applicable notice and/or cure periods, Borrower shall pay the Indebtedness when due under the Loan Documents and shall perform the Obligations in full when they are required to be performed.

Section 3.4. Replacement of Fixtures and Personalty. Borrower shall not, without the prior written consent of Lender, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Borrower subject to the liens and security interests of this Mortgage and the other Loan Documents, and free and clear of any other lien or security interest except such as may be first approved in writing by Lender.

Section 3.5. Maintenance of Rights of Way, Easements and Licenses. Borrower shall maintain (or cause the third-party responsible for such maintenance to maintain) all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Mortgaged Property and will not, without the prior consent of Lender, consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgaged Property. Borrower shall comply with (or cause compliance of) all restrictive covenants affecting the Mortgaged Property, and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

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Section 3.6. Inspection. Borrower shall permit Lender and its agents, representatives and employees upon reasonable prior notice to Borrower, to inspect the Mortgaged Property and conduct such environmental and engineering studies as Lender may require, provided that such inspections and studies shall not materially interfere with the use and operation of the Mortgaged Property.

Section 3.7. Transfer or Encumbrance of Mortgaged Property. Reference is made to the provisions of Section 5.8 of the Loan Agreement which describes, inter alia, certain prohibited transfers and encumbrances of the Mortgaged Property.

Section 3.8. Other Covenants, Representations and Warranties. All of the covenants, including, but not limited to affirmative covenants, negative covenants and single purpose covenants, in (a) the Loan Agreement, (b) the Note and (c) any of the other Loan Documents (subject to all provisos and limitations in the Loan Documents) are incorporated herein by reference and are made a part of this Mortgage to the same extent and with the same force as if fully set forth herein and, together with covenants in this Article III, shall be covenants running with the land. The covenants set forth in the Loan Agreement include, among other provisions: (v) the obligation to pay when due (or cause the payment of) all taxes on the Mortgaged Property or assessed against Lender with respect to the Loan, (w) the right of Lender to inspect the Mortgaged Property, (x) the obligation to keep (or cause to be kept) the Mortgaged Property insured as Lender may require, (y) the obligation to comply (or cause the compliance) with all legal requirements (including environmental laws), maintain (or cause to be maintained) the Mortgaged Property in good condition and repair, and free from mechanics', materialmen's or like liens or claims, and promptly repair, restore or rebuild (or cause to be promptly repaired, restored or rebuilt) any improvements which are damaged or destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction, whether or not proceeds of insurance are available or sufficient therefor, and (z) except as otherwise permitted under the Loan Agreement, the obligation of Borrower to obtain Lender's consent prior to entering into, modifying or taking other actions with respect to Leases.

Section 3.9. Condemnation Awards and Insurance Proceeds.

- (a) **Condemnation Awards**. Subject to the terms of the Loan Agreement, Borrower assigns all awards and compensation for any condemnation or other taking, or any purchase in lieu thereof, to Lender and authorizes Lender to collect and receive such awards and compensation and to give proper receipts and acquittances therefor.
- (b) **Insurance Proceeds**. Subject to the terms of the Loan Agreement, Borrower assigns to Lender all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property. Borrower authorizes Lender to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Lender, instead of to Borrower and Lender jointly.

ARTICLE IV. DEFAULT AND FORECLOSURE.

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Section 4.1. Remedies. If an Event of Default exists, Lender may, at Lender's election, exercise any or all of the following rights, remedies and recourses:

- (a) **Acceleration.** Declare the Indebtedness then outstanding to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Borrower), whereupon the same shall become immediately due and payable.
- (b) **Entry on Mortgaged Property.** Enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Borrower remains in possession of the Mortgaged Property after an Event of Default and without Lender's prior written consent, upon prior written notice, Lender may invoke any legal remedies to dispossess Borrower.
- (c) **Operation of Mortgaged Property.** Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Lender may deem necessary or desirable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Lender deems necessary or desirable), and apply all Rents and other amounts collected by Lender in connection therewith in accordance with the provisions of Section 4.7 herein.
- (d) **Foreclosure and Sale.** Institute proceedings for the complete foreclosure of this Mortgage, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Borrower shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Borrower, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Borrower. Lender may be a purchaser at such sale and if Lender is the highest bidder, may credit the portion of the purchase price that would be distributed to Lender against the Indebtedness in lieu of paying cash.
- (e) **Receiver.**
 - (1) In addition to any provision of this Mortgage authorizing Lender, from and after the occurrence and during the continuance of an Event of Default entitling Lender to pursue such remedy, to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities and duties as provided for in Sections 15-1701, 15-1703 and 15-1704 of the Act.

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- (2) Upon, or at any time prior or after, the filing of any complaint to foreclose the lien of this Mortgage or instituting any other foreclosure of the liens and security interests provided for in this Mortgage or any other legal proceedings under this Mortgage from and after the occurrence and during the continuance of an Event of Default entitling Lender to pursue such remedy, Lender may, at Lender's sole option, make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Mortgaged Property, as a matter of strict right, on an *ex parte* basis to the extent allowed by applicable Laws (but otherwise with reasonable prior notice to Borrower), and Borrower does hereby irrevocably consent to such appointment and agrees not to oppose any application therefore by Lender, but nothing herein is construed to deprive Lender of any other right, remedy or privilege Lender may now have under the law to have a receiver appointed; provided that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Lender to receive payment of all of the Rents, issues, deposits and profits pursuant to other terms and provisions set forth in this Mortgage. Such appointment may be made either before or after sale; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness; without regard to the value of the Mortgaged Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and Lender hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the Act, including the power to take possession, control and care of the Mortgaged Property and to collect all Rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and apply all funds received toward the Obligations, and in the event of a sale and a deficiency where Borrower has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Borrower or its devisees, legatees, administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such Rents, issues, deposits, profits and avails, and shall have all other powers that maybe necessary or useful in such cases for the protection, possession, control management and operation of the Mortgaged Property during the whole of any such period. To the extent permitted by law, such receiver may extend or modify any then-existing leases and make new leases of the Mortgaged Property or any part thereof, which extensions, modifications and new leases may provide for terms to expire, or for options to leases to extend or renew terms to expire, beyond the maturity date of the Loan, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Mortgaged Property are subject to the lien hereof,

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and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction

- (f) **UCC.** Exercise any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing: (i) the right to take possession of the personal property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the personal property, and (ii) request Borrower at its expense to assemble the personal property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the personal property sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower.
- (g) **Other.** Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Note either before, during or after any proceeding to enforce this Mortgage).

Section 4.2. Remedies Cumulative, Concurrent and Nonexclusive. Lender shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Borrower or others obligated under the Note and the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Lender, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Lender in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 4.3. Release of and Resort to Collateral. Lender may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, Lender may resort to any other security in such order and manner as Lender may elect.

Section 4.4. Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Borrower hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Borrower by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for

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any appraisal, valuation, stay of execution, exemption from civil process, or extension of time for payment, (b) any and all rights of redemption from sale under any judgment of foreclosure of this Mortgage on behalf of Borrower and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property of any nature whatsoever, subsequent to the date of this Mortgage, and (c) any right to a marshalling of assets or a sale in inverse order of alienation. The foregoing waiver of right of redemption is made pursuant to the provisions of Section 735 ILCS 5/15-1601(b) of the Act.

Section 4.5. Discontinuance of Proceedings. If Lender shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Lender shall have the unqualified right to do so and, in such an event, Borrower and Lender shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgaged Property and otherwise (except as may be provided in any written agreement between Borrower and Lender providing for the discontinuance or abandonment of such proceedings), and the rights, remedies, recourses and powers of Lender shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Lender thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

Section 4.6. Application of Proceeds. The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Lender (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

- (a) to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (i) receiver's fees and expenses, (ii) court costs, (iii) attorneys' and accountants' fees and expenses, (iv) costs of advertisement, (v) insurance premiums and (vi) the payment of all ground rent, real estate taxes and assessments, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold;
- (b) to the payment of all amounts (including interest), other than the unpaid principal balance of the Note and accrued but unpaid interest, which may be due to Lender under the Loan Documents;
- (c) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as Lender in its sole discretion may determine; and
- (d) the balance, if any, to the payment of the persons legally entitled thereto.

Section 4.7. Occupancy after Foreclosure. The purchaser at any foreclosure sale pursuant to Section 4.1(d) shall become the legal owner of the Mortgaged Property. Subject to any non-disturbance agreements, or subordination, non-

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disturbance and attornment agreements, then in effect, all occupants of the Mortgaged Property, including, without limitation, Borrower, shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale, be deemed tenants holding over, and shall forthwith deliver possession thereof immediately to the purchaser upon demand or be summarily dispossessed according to provisions of law applicable to tenants holding over. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgaged Property.

Section 4.8. Additional Advances and Disbursements; Costs of Enforcement.

- (a) If any Event of Default exists, Lender shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Borrower. All sums advanced, and expenses incurred at any time by Lender under this Section 4.9, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced, or expense incurred, to and including the date of reimbursement, computed at the Default Rate, and all such sums, together with interest thereon, shall be secured by this Mortgage.
- (b) Borrower shall pay all expenses (including attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage and the other Loan Documents, or the enforcement, compromise or settlement of the Indebtedness or any claim under this Mortgage and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Lender in respect thereof, by litigation or otherwise.

Section 4.9. No Mortgagee in Possession. Neither the enforcement of any of the remedies under this Article IV, the assignment of the Rents and Leases under Article V, the security interests under Article VI, nor any other remedies afforded to Lender under the Loan Documents, at law or in equity shall cause Lender to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Lender to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

Section 4.10. Actions and Proceedings. Lender has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its reasonable discretion, decides is necessary to protect its interest in the Mortgaged Property.

ARTICLE V. ASSIGNMENT OF RENTS AND LEASES.

Section 5.1. Assignment of Leases and Rents.

- (a) Borrower hereby absolutely, presently, irrevocably, and unconditionally grants, assigns, and transfers to Lender all of Borrower's present and future right, title, interest, and estate in, to and under all Leases and Rents, whether now owned or

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hereafter acquired and the absolute, present, irrevocable, and unconditional right to receive, collect, and possess all Rents.

- (b) This Section 5.1 constitutes an absolute, present, irrevocable, and unconditional assignment of Leases and Rents to Lender and not merely a collateral assignment of, or the grant of a lien or security interest in or on, Leases and Rents. Such grant, assignment, and transfer shall not be construed to: (i) bind Lender to the performance of any of the covenants, conditions, or provisions contained in any Lease or otherwise impose any obligation upon Lender; or (ii) create, or operate to place or impose, any responsibility, obligation, or liability upon Lender for: (A) the control, care, maintenance, management, or repair of the Mortgaged Property; (B) any dangerous or defective condition of the Mortgaged Property, including, without limitation, the presence of any environmental contamination or conditions; (C) any waste committed on the Mortgaged Property by any Person; and/or (D) any negligence in the management, upkeep, repair, or control of the Mortgaged Property.

Section 5.2. Revocable License.

- (a) Notwithstanding the grant, assignment and transfer of Leases and Rents from Borrower to Lender pursuant to Section 5.1, Lender grants to Borrower a revocable license to collect and receive Rents as they become due, and to retain, use, and apply Rents to the payment of the Secured Obligations and to the costs and expenses incurred in connection with the operation and maintenance of the Mortgaged Property, and to exercise all rights as landlord under any Lease, in each case subject to the terms of this Mortgage and the other Loan Documents. After the occurrence of an Event of Default, Borrower shall collect and receive all such Rents as trustee for the benefit of Lender.
- (b) From and after the occurrence of any Event of Default:
- (1) The revocable license granted to Borrower pursuant to Section 5.2(a) shall immediately and automatically, with or without notice from Lender, cease and terminate and shall be void and of no further force or effect;
 - (2) Lender shall immediately and automatically be entitled to receive, collect, and possess all Rents (whether or not Lender enters upon or takes control of the Mortgaged Property or has a receiver appointed for the Mortgaged Property or takes any other action), as hereinafter provided in this Mortgage;
 - (3) Lender may, at its sole option, notify in writing all tenants under Leases that all Rents due thereunder from and after the date of such notice shall be paid to Lender at its address set forth in this Mortgage, or at such other place as Lender shall notify Borrower or the tenants in writing; and
 - (4) Any portion of Rents then or thereafter received or held by Borrower shall be payable immediately upon written demand to Lender for application by Lender, at its option, to the payment of the Secured Obligations and/or expenses in connection with the operation and maintenance of the Mortgaged Property.

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Section 5.3. Certain Rights of Lender. From and after any revocation of the license granted pursuant to Section 5.2(a), Lender shall, at its option and in addition to its other rights and remedies provided in this Mortgage and the other Loan Documents and/or at law or in equity, have the immediate and continuing right, power, and authority, either personally or by agent without bringing any foreclosure or other action or proceeding, or by a receiver appointed by a court and without the necessity of taking possession of the Mortgaged Property in its own name, and without the need for any other authorization or action by Borrower or Lender, to take any or all of the following actions:

- (a) Notify any tenant or other person that Leases have been assigned to Lender and that all Rents are to be paid directly to Lender.
- (b) Settle, compromise, release, extend the time of payment for, and make allowances, adjustments, and discounts of, any Rents or other obligations in, to, and under Lease.
- (c) Lease all or any part of the Mortgaged Property and/or modify, amend, renew, or terminate any Leases.
- (d) Perform any and all obligations of Borrower under Leases and exercise any and all rights of Borrower therein contained to the full extent of Borrower's rights and obligations thereunder.

Section 5.4. No Merger of Estates. So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Borrower, Lender, any lessee or any third party by purchase or otherwise.

ARTICLE VI. SECURITY AGREEMENT.

Section 6.1. Security Interest. This Mortgage constitutes a "Security Agreement" on personal property within the meaning of the UCC and other applicable law with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, and subject to the Permitted Exceptions, Borrower grants to Lender, a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgaged Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations and agrees that Lender shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Lender with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements sent to Borrower at least ten (10) days prior to any action under the UCC shall constitute commercially reasonable notice to Borrower.

Section 6.2. Further Assurances. Borrower shall execute and deliver to Lender, in form and substance satisfactory to Lender, such further assurances as Lender may, from time to time, reasonably consider necessary to create, perfect and preserve Lender's security interest hereunder and Lender may cause such assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Borrower's state of organization

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is the State of Colorado and its chief executive office is in the State of Colorado at the address set forth in the first paragraph of this Mortgage. Borrower hereby irrevocably authorizes Lender at any time and from time to time to file, without the signature of Borrower, in any jurisdiction any amendments to existing financing statements and any initial financing statements and amendments thereto that (a) indicate the Mortgaged Property (i) as "all assets of Borrower and all proceeds thereof, and all rights and privileges with respect thereto" or words of similar effect, regardless of whether any particular asset comprised in the Mortgaged Property falls within the scope of Article/Chapter 9 of the UCC, or (ii) as being of an equal or lesser scope or with greater detail; (b) contain any other information required by Section 9-502(b) of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including whether Borrower is an organization, the type of organization and any organization identification number issued to Borrower; and (c) are necessary to properly effectuate the transactions described in the Loan Documents, as determined by Lender in its reasonable discretion. Borrower agrees to furnish any such information to Lender promptly upon request.

Section 6.3. No Obligation of Lender. The security interest herein granted shall in no event cause Lender to be deemed or construed as a mortgagee in possession of the Mortgaged Property, to obligate Lender to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

Section 6.4. Fixture Filing. From the date of its recording, this Mortgage shall be effective as a fixture financing statement within the purview of Section 9-502(b) of the UCC with respect to the Mortgaged Property and the goods described herein, which goods are or are to become fixtures related to the Mortgaged Property. The addresses of Borrower (Debtor) and Lender (Secured Party) are set forth below. This Mortgage is to be filed for recording with the recorder of deeds of the county or the counties where the Mortgaged Property is located. For this purpose, the following information is set forth.

- (a) Name and Address of Debtor: NCW King Holdings, LLC, a Colorado limited liability company, 7251 W 20 Street, L-200, Greeley, Colorado 80634
- (b) Name and Address of Secured Party: First National Bank, 1475 N. Denver Ave., Loveland, Colorado 80538.
- (c) This document covers goods which are or are to become fixtures.
- (d) Debtor is the record owner of the Premises and Improvements.
- (e) Debtor's chief executive office is located in the State of Colorado.
- (f) Debtor's state of formation is Colorado.
- (g) Debtor's exact legal name is as set forth in the first paragraph of this Mortgage.
- (h) Debtor's FEIN is 85-0699263.
- (i) Debtor agrees that:

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- (1) Where Mortgaged Property is in possession of a third party, Borrower will join with Lender in notifying the third party of Lender's interest and obtaining an acknowledgment from the third party that it is holding the Mortgaged Property for the benefit Lender;
- (2) From and after the occurrence and during the continuance of an Event of Default entitling Lender to exercise such remedy, Borrower will cooperate with Lender in obtaining control with respect to the Mortgaged Property consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and
- (3) Until the Debt has been paid in full, Borrower will not change the state where it is located or change its company name without giving Lender at least thirty (30) days prior written notice in each instance.

Section 6.5. Continuing Effect Notwithstanding Termination of Mortgage. It is expressly agreed that until such time as the Indebtedness and Obligations have been paid and performed in full, or until the security interest granted hereby has been released in writing by Lender, this Mortgage shall remain fully effective as a security agreement and fixture filing, notwithstanding that the lien on real property that is created by this Mortgage may be extinguished or released, by foreclosure of this Mortgage or otherwise.

ARTICLE VII. MISCELLANEOUS.

Section 7.1. Limitation on Interest. The provisions of Section 9.25 of the Loan Agreement are incorporated herein by references as though fully set forth herein.

Section 7.2. Notices. Any notice required or permitted to be given under this Mortgage shall be (a) in writing, (b) sent in the manner set forth in the Loan Agreement, and (c) effective in accordance with the terms of the Loan Agreement.

Section 7.3. Covenants Running with the Land. All Obligations contained in this Mortgage are intended by Borrower and Lender to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Borrower" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Lender has or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Lender.

Section 7.4. Attorney-in-Fact. Borrower hereby irrevocably appoints Lender and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Lender deems reasonably necessary to protect Lender's interest, if Borrower shall fail to do so within ten (10) days after written request by Lender, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or

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further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be reasonably necessary for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Lender's security interests and rights in or to any of the collateral, and (d) while any Event of Default exists, to perform any obligation of Borrower hereunder; however: (i) Lender shall not under any circumstances be obligated to perform any obligation of Borrower; (ii) any reasonable sums advanced by Lender in such performance shall be added to and included in the Indebtedness and shall bear interest at the Default Rate; (iii) Lender as such attorney-in-fact shall only be accountable for such funds as are actually received by Lender; and (iv) Lender shall not be liable to Borrower or any other person or entity for any failure to take any action which Lender is empowered to take under this Section.

Section 7.5. Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of Lender and Borrower and their respective successors and assigns. Borrower shall not, without the prior written consent of Lender, assign any rights, duties or obligations hereunder.

Section 7.6. No Waiver. Any failure by Lender to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Lender shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.7. Subrogation. To the extent proceeds of the Note have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Lender shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Lender.

Section 7.8. Loan Agreement. If any conflict or inconsistency exists between this Mortgage and the Loan Agreement, the Loan Agreement shall govern.

Section 7.9. Release. Upon payment in full of the Indebtedness and performance in full of the Obligations, Lender, upon Borrower's request and at Borrower's reasonable expense, shall fully release the liens and security interests created by this Mortgage and provide termination statements for filed financing statements, if any, to Borrower.

Section 7.10. Limitation of Liability. Borrower's liability hereunder is subject to the limitation on liability provisions of Section 9.19 of the Loan Agreement.

Section 7.11. Obligations of Borrower, Joint and Several. If more than one person or entity has executed this Mortgage as "Borrower," the obligations of all such persons or entities hereunder shall be joint and several.

Section 7.12. Governing Law. This Mortgage shall be governed by and construed, interpreted and enforced in accordance with the laws of the State.

Section 7.13. Venue. Borrower hereby consents to the jurisdiction of any state or federal court located within the county and state where the Mortgaged Property is located and irrevocably agrees that, subject to Lender's election, all actions or

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proceedings arising out of or relating to this Mortgage or the other Loan Documents shall be litigated in such courts. Borrower expressly submits and consents to the jurisdiction of the aforesaid courts and waives any defense of forum non conveniens.

Section 7.14. Headings. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 7.15. Entire Agreement. This Mortgage and the other Loan Documents embody the entire agreement and understanding between Lender and Borrower and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 7.16. Counterparts. This Mortgage may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

Section 7.17. No Oral Change. This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 7.18. Inapplicable Provisions. If any term, covenant or condition of this Mortgage is held to be invalid, illegal or unenforceable in any respect, this Mortgage shall be construed without such provision.

Section 7.19. Waiver of Trial by Jury. BORROWER AND LENDER EACH HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, SUIT, COUNTERCLAIM, CROSSCLAIM OR OTHERWISE, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THIS MORTGAGE OR THE LOAN DOCUMENTS, THE MORTGAGED PROPERTY OR ANY ACTS OR OMISSIONS OF BORROWER OR LENDER, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES OR AGENTS IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO A TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

Section 7.20. Borrower Waiver. BORROWER HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY OR ON BEHALF OF LENDER WITH RESPECT TO THIS MORTGAGE, THE NOTE OR OTHERWISE IN RESPECT OF THE LOAN, ANY AND EVERY RIGHT BORROWER MAY HAVE TO (A) INJUNCTIVE RELIEF, (B)

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INTERPOSE ANY COUNTERCLAIM (OTHER THAN COMPULSORY COUNTERCLAIMS), AND (C) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING (EXCEPT TO THE EXTENT COMPULSORY). NOTHING CONTAINED IN THE IMMEDIATELY PRECEDING SENTENCE SHALL PREVENT OR PROHIBIT BORROWER FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST LENDER WITH RESPECT TO ANY ASSERTED CLAIM.

Section 7.21. No Joint Venture or Partnership; No Third-Party Beneficiaries.

- (a) Borrower and Lender intend that the relationships created by this Mortgage and the Loan Documents are solely that of lender and borrower. Nothing in this Mortgage or the Loan Documents is intended to create a joint venture, partnership, tenancy in common, or joint tenancy relationship between Borrower and Lender nor grant to Lender any interest in the Mortgaged Property other than that of mortgagee, assignee, secured party, beneficiary or lender.
- (b) This Mortgage and the Loan Documents are solely for the benefit of the Lender and nothing contained in this Mortgage or the Loan Documents shall be deemed to confer upon anyone other than Lender any right to insist upon or to enforce the performance or observance of any of the obligations contained in this Mortgage or the Loan Documents.

Section 7.22. Time of the Essence. Time is of the essence with respect to the performance by Borrower of its obligations pursuant to this Mortgage.

Section 7.23. True Copy. Borrower acknowledges that it has received a true copy of this Mortgage.

Section 7.24. After-Acquired Property. This Mortgage shall encumber, encompass, cover, and apply to and include any and all "after-acquired property" of Borrower located at, adjacent, or adjoining to or in any way associated with the use or operation of Mortgaged Property, and such after-acquired property shall be a part of the Mortgaged Property. In furtherance of the foregoing, Borrower has given, granted, bargained, sold, and conveyed, and by these presents does give, grant, bargain, sell, and convey unto Lender all of Borrower's right, title, and interest in and to said after-acquired property. The after-acquired property identified by Lender from time to time may also be identified in a notice of extension filed in the real property records in which this Mortgage is recorded or in any other county in which the after-acquired property is located. Borrower agrees that Lender has the absolute, irrevocable right and power, which right and power is coupled with an interest, to file one or more notices of extension, and that all after-acquired property of Borrower identified by Lender, whether through a notice of extension or otherwise, shall secure the due and punctual payment and performance of all of the Indebtedness as and when the same becomes due and payable, with interest thereon, and all renewals, extensions, renewals, rearrangements, modifications, replacements, amendments, amendments, and restatements, or supplements thereof. This Section 7.24 is intended to be and is an "after-acquired property clause" and shall be construed in accordance with the provisions of, applicable law of the State that authorizes or governs after-acquired property clauses in mortgages.

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ARTICLE VIII. SPECIAL STATE PROVISIONS.

Section 8.1. Conflicts. To the extent of any conflict between the provisions of this Article VIII and the other provisions of this Mortgage, the provisions of this Article VIII shall control.

Section 8.2. Compliance with the Act.

- (a) In the event any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence 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 Act.
- (b) If any provision of this Mortgage will grant to Lender any rights, remedies, powers or authorities upon default of the Borrower which are more limited than what would be vested in Lender under the Act in the absence of such provision, Lender will have such rights, remedies, powers and authorities that would be otherwise vested in it under the Act, to the fullest extent permitted by law.
- (c) Without limiting the generality of the foregoing, all reasonable and actual expenses incurred by Lender to the extent reimbursable under Sections 15-1510(b) and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.
- (d) BORROWER SHALL NOT AND WILL NOT APPLY FOR OR AVAIL ITSELF OF ANY APPRAISEMENT, VALUATION, STAY, EXTENSION OR EXEMPTION LAWS, OR ANY SO-CALLED "MORATORIUM LAWS," OR SIMILAR LAWS NOW EXISTING OR HEREAFTER ENACTED IN ORDER TO PREVENT OR HINDER THE ENFORCEMENT OR FORECLOSURE OF THIS INSTRUMENT, BUT HEREBY WAIVES THE BENEFIT OF SUCH LAWS. BORROWER FOR ITSELF AND ALL WHO MAY CLAIM THROUGH OR UNDER IT WAIVES ANY AND ALL RIGHT TO HAVE THE PROPERTY AND ESTATES COMPRISING THE PROPERTY MARSHALLED UPON ANY FORECLOSURE OF THE LIEN HEREOF AND AGREES THAT ANY COURT HAVING JURISDICTION TO FORECLOSE SUCH LIEN MAY ORDER THE PROPERTY SOLD AS AN ENTIRETY. IN THE EVENT OF ANY SALE MADE UNDER OR BY VIRTUE OF THIS INSTRUMENT, THE WHOLE OF THE PROPERTY MAY BE SOLD IN ONE PARCEL AS AN ENTIRETY OR IN SEPARATE LOTS OR PARCELS AT THE SAME OR DIFFERENT TIMES, ALL AS LENDER MAY DETERMINE. LENDER SHALL HAVE THE RIGHT TO BECOME THE PURCHASER AT ANY SALE MADE UNDER OR BY VIRTUE OF THIS INSTRUMENT AND LENDER SHALL BE ENTITLED TO CREDIT BID THE INDEBTEDNESS OR ANY PORTION THEREOF IN LENDER'S SOLE DISCRETION
- (e) To the full extent permitted by law, Borrower hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Borrower

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acknowledges that the Mortgaged Property does not constitute agricultural real estate as defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act.

Section 8.3. Suits to Protect the Mortgaged Property. The Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property and in the Rents and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with, such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Lender.

Section 8.4. Maturity Date. The maturity date of the Indebtedness secured by this Mortgage is June 12, 2025.

Section 8.5. Use of Proceeds. The business being operated on the Mortgaged Property is a commercial enterprise being carried on by the Borrower for the purpose of profit. Borrower represents and warrants to Lender (a) that the proceeds of the Note secured by this Mortgage will be used by the Borrower solely for their own business purposes and in furtherance of Borrower's regular business affairs. The Loan proceeds shall, furthermore, be used for the purposes specified in 815 ILCS 205/4(1)(a) or 815 ILCS 205/4(1)(c) as well as loans secured by a mortgage on real estate which comes within the purview of 815 ILCS 205/4(1)(l) (or any substitute, amended or replacement statute), and that the indebtedness secured hereby constitutes a business loan which comes within the purview of said 815 ILCS 205/4(1)(c), (b) that the Loan evidenced by the Note is an exempted transaction under the Truth In Lending Act, 15 U.S.C. §1601 et seq., and (c) the proceeds of the Note secured by this Mortgage shall not be used for the purchase of registered equity securities within the purview of Regulation "U" issued by the Board of Governors of the Federal Reserve System.

Section 8.6. Interest Laws. It being the intention of Lender and Borrower to comply with the laws of the State of Illinois, it is agreed that notwithstanding any provision to the contrary in the Note, this Mortgage or any of the other Loan Documents, no such provision shall require the payment or permit the collection of Excess Interest. If any Excess Interest is provided for, or is adjudicated to be provided for, in the Note, this Mortgage or any of the other Loan Documents, then in such event: (a) the provisions of this Section 8.6 shall govern and control; (b) neither Borrower nor any other party obligated under the terms of the Note or any of the other Loan Documents shall be obligated to pay any Excess Interest; (c) any Excess Interest that Lender may have received hereunder shall, at the option of Lender, be (i) applied as a credit against the then unpaid principal balance under the Note, accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing; (d) the interest rate then in effect under the Note shall be subject to automatic reduction to the maximum lawful contract rate allowed under the applicable usury laws of the aforesaid State of Illinois, and the Note, this Mortgage and the other Loan Documents shall be deemed to be automatically reformed and modified to reflect such reduction in the interest rate; and (e) neither Borrower nor any other party obligated under the terms of the Note or any of the other

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Loan Documents shall have any action against Lender for any damages whatsoever arising out of the payment or collection of any Excess Interest.

Section 8.7. Other Amounts Secured; Maximum Indebtedness. Borrower acknowledges and agrees that this Mortgage secures the entire principal amount of the Note and interest accrued thereon, and regardless of whether the outstanding principal is repaid in whole or part or are future advances made at a later date, any and all litigation and other expenses and any other amounts as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Lender in connection with the Loan, all in accordance with the loan commitment issued in connection with this transaction and the Loan Documents. Under no circumstances, however, shall the total indebtedness secured hereby exceed SEVENTEEN MILLION THREE HUNDRED THIRTY-FIVE THOUSAND AND 00/100 DOLLARS (\$17,335,000.00). It is agreed that any future advances made by Lender for the benefit of Borrower from time to time under this Mortgage or the other Loan Documents and whether or not such advances are obligatory or are made at the option Lender, made at any time from and after the date of this Mortgage, and all interest accruing thereon, shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Mortgage. This Mortgage shall be valid and have priority to the extent of the full amount of the indebtedness secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law.

Section 8.8. Deed in Trust. If title to the Mortgaged Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any lien on the Mortgaged Property shall be construed as a similar prohibition or restriction against the creation of a lien on or security interest in the beneficial interest of such trust.

Section 8.9. Collateral Protection Act. For purposes of the Illinois Collateral Protection Act, 815 ILCS 180/1 et seq., Borrower hereby acknowledges Lender's right pursuant to this Section 8.9 to obtain collateral protection insurance. Unless Borrower provides Lender with evidence of the insurance required by and in accordance with the terms set forth in the Loan Agreement, Lender may purchase insurance at Borrower's expense to protect Lender's interests in the Mortgaged Property or any other collateral for the indebtedness secured hereby. This insurance may, but need not, protect Borrower's interests. The coverage Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Mortgaged Property or any other collateral for the indebtedness secured hereby. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by the Loan Agreement. If Lender purchases insurance for the Mortgaged Property or any other collateral for the indebtedness secured hereby, Borrower shall be responsible for the costs of that insurance, including interest in any other charges that Lender may lawfully impose 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 may be added to

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the indebtedness secured hereby. The costs of the insurance may be more than the cost of insurance that Borrower may be able to obtain on its own.

Section 8.10. Forbidden Entity. Borrower hereby certifies that it is not a “forbidden entity” as that term is defined in Section 22.6 of the Illinois Deposit of State Moneys Act, 15 ILCS 520/22.6; Public Act 094-0079.

Remainder of Page Intentionally Blank.

Signature Page Follows

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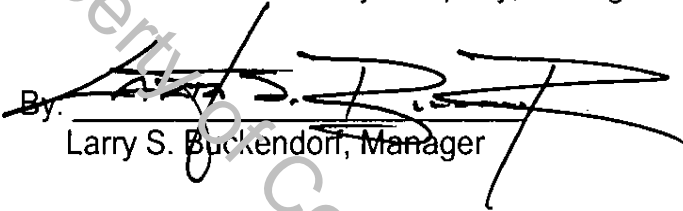
SIGNATURE PAGE TO MORTGAGE,
ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING

EXECUTED as of the date first above written.

BORROWER:

NCW KING HOLDINGS, LLC,
a Colorado limited liability company

By: LB HOLDINGS, LLC,
a Colorado limited liability company, Manager

By: 
Larry S. Buckendorf, Manager

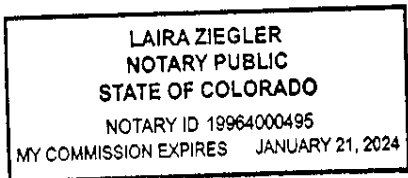
STATE OF Colorado

SS.

COUNTY OF Weld

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Larry S. Buckendorf, in his capacity as Manager of LB Holdings, LLC, a Colorado limited liability company, in its capacity as Manager of NCW King Holdings, LLC, a Colorado limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 11 day of June, 2020.




Notary Public

My Commission Expires: 1-21-24

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Exhibit A. Legal Description.

LOTS 9 TO 19 INCLUSIVE IN BLOCK 13 IN ELLSWORTH BEING A SUBDIVISION OF BLOCKS 1 TO 10, 13, 14 AND THE NORTH 225 FEET OF BLOCK 12 THE NORTH 350 FEET OF BLOCK 11 AND THE EAST 1/2 OF BLOCK 18 AND THE NORTH 350 FEET OF THE WEST 1/2 OF BLOCK 18 ALL IN CHICAGO HEIGHTS BEING A SUBDIVISION OF PART OF THE WEST 1/2 OF THE SOUTH EAST 1/4 OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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