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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption

Report Mortgage Fraud  
800-532-8785



Doc#: 1525242050 Fee: \$112.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 09/09/2015 02:31 PM Pg: 1 of 38

Property of Cook County Clerk's Office

3126 W.

The property identified as: PIN: 17-19-405-027-0000

**Address:**

Street: 1854 W. 18th Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60608

Lender: ASSOCIATED BANK, NATIONAL ASSOCIATION

Borrower: CITY PADS II LLC, 300 MADISON INVESTORS LLC, 1854 W. 18TH INVESTORS LLC AND WALTON INVESTORS LLC

Loan / Mortgage Amount: \$7,500,000.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

Box 400

S Y  
P 38  
S N  
SC Y  
INTA

Certificate number: 51EE3183-299E-41C5-A3FB-022FB3D9C977

Execution date: 8/19/2015

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This Instrument Was Prepared By  
And After Recording Please Return To:

Daniel Kohn, Esq.  
 Duane Morris LLP  
 190 South LaSalle Street  
 Suite 3700  
 Chicago, Illinois 60603

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

THIS CONSTRUCTION MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "Mortgage") is made as of August 24, 2015, by CITY PADS II LLC, a Delaware limited liability company, 300 MADISON INVESTORS LLC, a Delaware limited liability company, 1854 W. 18<sup>TH</sup> INVESTORS LLC, a Delaware limited liability company, and 3126 W. WALTON INVESTORS LLC, a Delaware limited liability company (collectively, "Borrower"), each with a mailing address c/o City Pads II LLC, 906 West Belmont Avenue, Chicago, Illinois 60657, Attention: Andrew Ahitow, to ASSOCIATED BANK, NATIONAL ASSOCIATION, a national banking association ("Lender"), its successors and its assigns, with a mailing address of 525 West Monroe Street, 24<sup>th</sup> Floor, Chicago, Illinois 60661, Attention: Michael McGovern, and pertains to the real estate described in Exhibit "A" attached hereto and made a part hereof (the "Premises").

I

**RECITALS**

A. Pursuant to that certain Construction Loan Agreement of even date herewith between Borrower and Lender (the "Loan Agreement"), Borrower has executed and delivered to Lender a Revolving Credit Note of even date herewith (together with all renewals, amendments, supplements, restatements, extensions, and modifications thereof and thereto, the

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“**Note**”), wherein Borrower promises to pay to the order of Lender the principal amount of Seven Million Five Hundred Thousand and No/100 Dollars (\$7,500,000.00) in repayment of a revolving acquisition and construction loan from Lender in like amount (the “**Loan**”), together with interest thereon, at variable rates of interest and otherwise as set forth in the Note, which Note is due and payable on or before the Maturity Date (as defined in the Note), as such Maturity Date may be extended or accelerated in accordance with the terms of the Note; and

B. As security for the repayment of the Loan, in addition to this Mortgage, certain other loan documents have been executed and delivered to Lender (the Note, the Loan Agreement, this Mortgage, that certain guaranty agreement of even date herewith, executed by Andrew Ahitov, Elliot Offenbach and Daniel B. Zivin (collectively, the “**Guarantor**”; Guarantor, together with any other guarantors of the indebtedness secured hereby, whether now or hereafter existing, are referred to collectively herein as the “**guarantors**”), and all other documents or instruments executed and/or delivered as additional evidence of, or security for repayment of, the Loan, whether now or hereafter existing, and all renewals, amendments, supplements, restatements, extensions, and modifications thereof and thereto, are hereinafter sometimes collectively referred to as the “**Loan Documents**”). The terms and provisions of the other Loan Documents are hereby incorporated herein by this reference.

C. In consideration of advances, credits and other financial accommodations heretofore or hereinafter made to Borrower by Lender, Lender has required Borrower hereby to deliver, pledge, assign, transfer, mortgage and warrant to Lender the Mortgaged Property (as that term is hereinafter defined) as security for repayment of the Loan as well as any and all other amounts owed to Lender under the terms of the Loan Documents.

## II

### THE GRANT

**NOW, THEREFORE**, to secure the payment of the principal amount of the Note and interest thereon (at variable rates and as otherwise provided therein) and all fees and premiums, if any, thereon, and all other sums due thereunder or advanced by Lender in accordance with the Loan Documents and all costs and expenses incurred by Lender in connection with any of the Loan Documents and the reimbursement to Lender for any amounts advanced pursuant to any letters of credit issued pursuant to the Loan Documents or any fees or charges associated with such letters of credit (all such obligations and payments are sometimes referred to herein as the “**indebtedness secured hereby**”), and to secure any and all obligations, contingent or otherwise, whether now existing or hereafter arising of Borrower to Lender, and to secure the observance and performance of the agreements contained herein and in the other Loan Documents, Borrower hereby **GRANTS, ASSIGNS, REMISES, RELEASES, WARRANTS, BARGAINS, SELLS, CONVEYS, and MORTGAGES** to Lender, its successors and assigns, forever all of Borrower’s estate, right, title and interest, whether now or hereafter acquired, in and to the Premises, together with the following described property, whether now or hereafter acquired (the Premises, together with a security interest in and a lien on the following described property being hereinafter referred to collectively as the “**Mortgaged Property**”), all of which other property is hereby pledged on a parity with the Premises and not secondarily:

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(a) All buildings and other improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Mortgaged Property immediately upon the delivery thereof to the Premises;

(b) All right, title and interest of Borrower in the Premises, including, without limitation, any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, sidewalks and alleys adjoining the Premises;

(c) Each and all of the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights and any and all other rights, liberties and privileges of the Premises or in any way now or hereafter appertaining thereto, including homestead and any other claim at law or in equity, as well as any after-acquired title, franchise or license and the reversions and remainders thereof;

(d) All leases now or hereafter on or affecting the Premises, whether written or oral, and all agreements for use of the Premises, together with all rents, issues, deposits, profits and all accounts relating to the Premises and other benefits now or hereafter arising from or in respect of the Premises accruing and to accrue from the Premises and the avails thereof;

(e) All fixtures and personal property now or hereafter owned by Borrower and attached to, contained in or used in connection with the Premises or the aforesaid improvements thereon, including, without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, inventory, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring and all renewals or replacements thereof or articles in substitution therefor, whether or not the same be attached to such improvements, it being agreed that all such property owned by Borrower and placed on the Premises or used in connection with the operation or maintenance thereof shall, so far as permitted by law, be deemed for the purpose of this Mortgage to be part of the real estate constituting and located on the Premises and covered by this Mortgage;

(f) All judgments, insurance proceeds, awards of damages and settlements which may result from any damage to all or any portion of the Premises and the other Mortgaged Property, or any part thereof, or to any rights appurtenant thereto;

(g) All compensation, awards, damages, claims, rights of actions and proceeds of or on account of (i) any damage or taking, pursuant to the power of eminent domain, of the Premises and the other Mortgaged Property or any part thereof, (ii) damage to all or any portion of the Premises and the other Mortgaged Property by reason of the taking,

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pursuant to the power of eminent domain, of all or any portion of the Premises and the other Mortgaged Property or of other property, or (iii) the alteration of the grade of any street or highway on or about the Premises and the other Mortgaged Property or any part thereof; and except as otherwise provided herein, Lender is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor and to apply the same toward the payment of the indebtedness and other sums secured hereby;

(h) All accounts relating to the Premises, contract rights, general intangibles, actions and rights in action, including, without limitation, all rights to insurance proceeds and unearned premiums arising from or relating to damage to the Premises or the other Mortgaged Property or any part thereof;

(i) All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Premises or the other Mortgaged Property;

(j) All building materials and goods which are procured or to be procured for use on or in connection with the Mortgaged Property, whether or not such materials and goods have been delivered to the Premises;

(k) All plans, specifications, architectural renderings, drawings, licenses, permits, soil test reports, other reports of examinations or analyses, contracts for services to be rendered to Borrower, or otherwise in connection with the Mortgaged Property and all other property, contracts, reports, proposals, and other materials now or hereafter existing in any way relating to the Premises or the other Mortgaged Property or construction of additional improvements thereto;

(l) All real estate tax refunds and other related refunds for the Premises; and

(m) The proceeds from any sale, transfer, pledge or other disposition of any or all of the foregoing described Mortgaged Property;

To have and to hold the same unto Lender and its successors and assigns forever, for the purposes and uses herein set forth together with all right to possession of the Premises after the occurrence of any Default (as hereinafter defined in **Section 4.1** hereof) hereunder subject only to the schedule of exceptions, if any, listed in the title insurance policy insuring Lender's interest in the Premises (collectively, "**Permitted Encumbrances**"); Borrower hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State where the Premises are located.

**BORROWER REPRESENTS, WARRANTS AND COVENANTS**, to Lender that Borrower, in the aggregate, is lawfully seized of the Premises, that the same is unencumbered except by the Permitted Encumbrances, and that it has good right, full power and lawful authority to convey and mortgage the same, and that Borrower will warrant and forever defend said parcels and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever. The covenants and warranties of this paragraph shall survive foreclosure of this Mortgage and shall run with the Premises.

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If and when (a) the principal amount of the Note and all interest as provided thereunder has been paid, and (b) Borrower has satisfied all obligations thereunder and under the other Loan Documents, then this Mortgage shall be released at the cost of Borrower, but otherwise shall remain in full force and effect.

## III

### GENERAL AGREEMENTS

**Section 3.1 Principal and Interest.** Borrower shall pay or cause to be paid promptly when due the principal and interest on the indebtedness evidenced by the Note at the times, at the variable rates and in the manner provided in the Note, this Mortgage and the other Loan Documents. Any amount not paid when due hereunder, and such failure continues beyond any applicable grace period, shall accrue interest at the Default Interest Rate (as defined in the Note).

**Section 3.2 Property Taxes.** Borrower shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer charges, and any other charges that may be asserted against the Mortgaged Property or any part thereof or interest therein, and furnish to Lender duplicate receipts therefor within thirty (30) days after payment thereof. Borrower may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes or assessments, provided that:

(a) such contest shall have the effect of preventing the collection of the tax or assessment so contested and the sale or forfeiture of the Mortgaged Property or any part thereof or interest therein to satisfy the same;

(b) Borrower has notified Lender in writing of the intention of Borrower to contest the same before any tax or assessment has been increased by any interest, penalties or costs; and

(c) Borrower has deposited with Lender, at such place as Lender may from time to time in writing designate, a sum of money or other security acceptable to Lender that is sufficient, in Lender's sole and absolute judgment, to pay in full such contested tax and assessment and all penalties and interest that might become due thereon, and shall keep on deposit an amount sufficient, in Lender's sole and absolute judgment, to pay in full such contested tax and assessment, increasing such amount to cover additional penalties and interest whenever, in Lender's sole and absolute judgment, such increase is advisable. Upon the consummation of such contest, and provided there is no existing Default hereunder, any excess funds held by Lender shall be returned to Borrower.

In the event Borrower fails to prosecute such contest in good faith and with reasonable diligence, Lender may, at its option, apply the monies and liquidate any securities deposited with Lender in payment of, or on account of, such taxes and assessments, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of the money and any such security so deposited is insufficient for the payment in full of such taxes and assessments, together with all penalties and interest thereon, Borrower shall forthwith, upon demand, either

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deposit with Lender a sum that, when added to such funds then on deposit, is sufficient to make such payment in full, or, if Lender has applied funds on deposit on account of such taxes and assessments, restore such deposit to an amount satisfactory to Lender. Provided no Default exists hereunder, Lender shall, if so requested in writing by Borrower, after final disposition of such contest and upon Borrower's delivery to Lender of an official bill for such taxes, apply the money so deposited in full payment of such taxes and assessments or that part thereof then unpaid, together with all penalties and interest thereon, and any excess security shall be returned to Borrower.

**Section 3.3 Tax Escrow.** Following an Event of Default, upon Lender's written request, Borrower, to provide for the payment of real estate taxes and assessments pertaining to the Premises, shall, simultaneously with Borrower's monthly payments of interest and principal to Lender deposit monthly with Lender one twelfth (1/12th) of one hundred percent (100%) of the annual real estate taxes as reasonably estimated by Lender from time to time in such manner as Lender may prescribe so as to provide for the current year's real estate tax obligation. If the amount estimated to pay said taxes is not sufficient, Borrower shall pay the difference within five (5) days following Lender's demand therefor in writing. Should Borrower fail to deposit sufficient amounts with Lender to pay such obligations, Lender may, but shall not be obligated to, advance monies necessary to make up any deficiency in order to pay such obligations. Any monies so advanced by Lender shall become so much additional indebtedness secured hereby and shall become immediately due and payable with interest due thereon at the Default Interest Rate. Lender is not obligated to inquire into the validity or accuracy of the real estate tax obligations before making payments of the same and nothing herein contained shall be construed as requiring Lender to advance other monies for said purpose nor shall Lender incur any personal liability for anything it may do or omit to do hereunder. It is agreed that all such payments made, at the option of Lender, shall be (i) held in trust by it without earnings for the payment of the real estate tax obligations; (ii) carried in a tax account for the benefit of Borrower and withdrawn by Lender to pay the real estate tax obligations, or (iii) credited to the unpaid balance of said indebtedness as received, provided that Lender advances upon this obligation sums sufficient to pay said items as the same accrue and become payable. If such items are held in trust or carried in a tax account for Borrower, the same are hereby pledged together with any other account of Borrower, or any guarantor of the indebtedness hereby, held by Lender to further secure the indebtedness secured hereby, and any officer of Lender is authorized to withdraw the same and apply said sums as aforesaid. Notwithstanding anything to the contrary contained herein, in the event any amounts are held by Lender pursuant to the terms of this Section 3.3, Lender shall either apply such amounts to real estate taxes when due and payable, or, in the alternative, toward the principal balance of the Loan; provided, if no Default is then occurring, such amounts shall be applied to said real estate taxes.

Notwithstanding anything contained in this paragraph to the contrary, Lender shall have no obligation to pay such taxes, assessments and other governmental liens or charges against the Mortgaged Property from the amounts collected by Lender pursuant to this paragraph if (i) any default or event of default has occurred under any of the Loan Documents and such default or event of default remains uncured beyond any applicable cure period, or (ii) Borrower fails to provide Lender with a written request to pay such taxes, assessments and other governmental liens or charges against the Mortgaged Property at least ten (10) business days prior to the date on which the same become delinquent or past due and further provided that such written request

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from Borrower includes a duplicate copy of the applicable bill for such taxes, assessments and other governmental liens or charges against the Mortgaged Property which Borrower specified in such request to be paid from such amounts held by Lender pursuant to this paragraph.

Borrower agrees to indemnify, defend and hold Lender harmless from any loss, cost, expense, claim, penalty or charge (including reasonable attorneys' fees) that result from Borrower's failure to comply with the foregoing.

**Section 3.4 Payments by Lender.** In the event of a Default hereunder, Lender is hereby authorized to make or advance, in the place and stead of Borrower, any payment relating to taxes, assessments, water and sewer charges, and other governmental charges, fines, impositions or liens that may be asserted against the Mortgaged Property or any part thereof, and may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy thereof or into the validity of any tax, assessment, lien, sale, forfeiture or title or claim relating thereto. In the event of a Default hereunder, Lender is further authorized to make or advance, in the place and stead of Borrower, any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, charge or payment, as well as take any and all actions which Lender deems necessary or appropriate on Borrower's behalf whenever, in Lender's sole and absolute judgment, such payments or actions seem necessary or desirable to protect the full security intended to be created by this Mortgage. In connection with any such advance, Lender is further authorized, at its option, to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Lender's choosing. All payments, costs and other expenses incurred by Lender pursuant to this **Section 3.4**, including without limitation reasonable attorneys' fees, expenses and court costs, shall constitute additional indebtedness secured hereby and shall be repayable by Borrower upon demand with interest at the Default Interest Rate.

**Section 3.5 Insurance.**

(a) Hazard.

(i) Borrower agrees to maintain insurance against loss or damage to the building and all improvements and betterments on the Mortgaged Property ("Loss"), in such amounts and with such limits as required pursuant to the terms of the Loan Agreement.

(ii) In case of any Loss in excess of One Hundred Thousand and No/100 Dollars (\$100,000.00), Borrower shall immediately give Lender and the insurance companies that have insured against such risks, notice of such Loss and Borrower is authorized, with Lender's prior written consent, which shall not be withheld unless there is a reasonable business purpose, to settle and adjust any claim under insurance policies which insure against such risks. Notwithstanding the foregoing, in the event of a total casualty or in the event of a Default, or event or condition which with the giving of notice or the passage of time would constitute a Default, shall have occurred hereunder or under any of the other Loan Documents, Lender (or after entry of decree of foreclosure, purchaser at the sale, or the decree creditor, as the case may be) is, subject to the provisions hereof,



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hereby authorized to either: (1) settle, adjust or compromise any claim under any insurance policies and Lender shall act in its reasonable discretion without the consent of Borrower; or (2) allow Borrower to settle, adjust or compromise any claims for Loss with the insurance company or companies on the amount to be paid upon the Loss. In all cases Lender is authorized to collect and receipt for any such insurance proceeds and the expenses incurred by Lender in the adjustment and collection of insurance proceeds shall be such additional indebtedness secured hereby and shall be reimbursed to Lender upon demand with interest thereon at the Default Interest Rate or may be deducted by Lender from said insurance proceeds prior to any other application thereof.

The insurance proceeds shall be made available to Borrower to repair and restore the Mortgaged Property if, and only if, all of the following conditions are satisfied:

(A) no Default shall have occurred hereunder or under any of the other Loan Documents and is continuing;

(B) the insurance proceeds shall, in Lender's reasonable judgment, be sufficient to complete the repair and restoration of the buildings, structures and other improvements on the Premises to an architectural and economic unit of substantially the same character and the same value as existed immediately prior to such casualty, or, if Lender shall determine, in its reasonable discretion, that the insurance proceeds are insufficient, Borrower shall have deposited with Lender the amount of the deficiency in cash within fifteen (15) days after Lender's demand therefor;

(C) after such repair or restoration, the Mortgaged Property shall, in Lender's reasonable judgment, adequately secure the outstanding balance of the Loan;

(D) the insurers do not deny liability to the insureds; and

(E) with respect to any claims for any Loss arising out of a single occurrence which shall in the aggregate exceed One Hundred Thousand Dollars (\$100,000.00), such Loss does not occur during the last three (3) months of the term of the Loan.

In all other cases, the insurance proceeds may, at the option of Lender, be applied in the reduction of the indebtedness secured hereby, whether due or not, in such order as Lender shall determine in its reasonable discretion, or be held by Lender and used to reimburse Borrower for the cost of rebuilding or restoring buildings or improvements on the Premises.

Notwithstanding anything herein to the contrary, in case of any Loss after foreclosure proceedings have been instituted, all insurance proceeds shall, at Lender's option, be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid to the owner of the equity of redemption if said owner shall then be entitled to the same, or as the court may otherwise direct. In case of the

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foreclosure of this Mortgage, the court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said decree creditor. Any foreclosure decree may further provide that in case of any one or more redemptions made under said decree, each successive redepton may cause the preceding loss clause attached to each insurance policy to be cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such redepton. In the event of foreclosure sale, Lender is hereby authorized, without the consent of Borrower, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Lender may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

Nothing contained in this Mortgage shall create any responsibility or obligation on Lender to collect any amount owing on any insurance policy, to rebuild, repair or replace any damaged or destroyed portion of the Mortgaged Property, or to perform any act hereunder.

(iii) Upon Borrower's request, and provided all of the conditions of the second paragraph of **Section 3.5(a)(ii)** have been satisfied or upon Lender's election, to apply such insurance proceeds toward repairing, restoring, and rebuilding such improvements, such insurance proceeds shall be made available therefor, by Lender, or such other depository designated by Lender, from time to time, to Borrower or at Lender's option directly to contractors, subcontractors, material suppliers and other persons entitled to payment in accordance with and subject to such conditions to disbursement as Lender may impose to ensure that the work is fully completed in a good and workmanlike manner and paid for and that no liens or claims arise by reason thereof, provided that Lender is furnished with evidence reasonably satisfactory to Lender of the estimated cost of such repairs, restoration and rebuilding and with architect's and other certificates, waivers of lien, certificates, contractors' sworn statements, and other evidence of the estimated cost thereof and of payments as Lender may require and approve in its reasonable discretion. In addition to the foregoing, if the estimated cost of the work exceeds ten (10%) percent of the original principal amount of the indebtedness secured hereby, Borrower shall also deliver to Lender for its prior approval evidence satisfactory to Lender in its reasonable discretion that the appraised value of the Mortgaged Property after such work will not be less than its appraised value established in the appraisal delivered to Lender on or prior to the date hereof and all plans and specifications for such repairs, restoration and rebuilding as Lender may require and approve in its reasonable discretion. No payment made prior to the final completion of the work shall exceed ninety (90%) percent of the value of the repair, restoration or rebuilding work performed, from time to time, and at all times the undisbursed balance of such proceeds remaining in the custody or control of Lender shall be, in Lender's reasonable discretion, at least sufficient to pay for the cost of completion of the work, free and clear of any liens. Lender may, at any time after the occurrence of a Default hereunder, and in its reasonable discretion, procure and substitute for any and all of the insurance policies so held as aforesaid, such other policies of insurance in such amounts and carried in such companies as Lender may select. Lender may commingle any

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such funds held by it hereunder and shall not be obligated to pay any interest with respect to any such funds held by or on behalf of Lender.

(b) Liability. Borrower shall carry and maintain commercial general liability insurance against bodily injury and property damage written with companies and in such amounts in as required pursuant to the terms of the Loan Agreement.

(c) Builder's Risk. Borrower shall obtain or shall cause to be obtained builder's risk insurance in such amounts and with such limits as required pursuant to the terms of the Loan Agreement. Insurance shall include Replacement Cost, Agreed Amount coverage.

(d) Flood Area. If the Premises are now or hereafter located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (the "Act"), Borrower, at its sole cost and expense shall keep the Premises insured by flood insurance in an amount not less than the maximum limit of coverage available under the Act.

(e) Worker's Compensation. If applicable, evidence of worker's compensation insurance covering all persons working on or about the Mortgaged Property and death, injury and/or property damage occurring on or about the Mortgaged Property or resulting from activity therefrom, with liability insurance limits for death of or injury to persons and/or damage to property in such amounts and with such limits as required pursuant to the terms of the Loan Agreement.

(f) Other Insurance. Upon Lender's written request, Borrower at its sole cost and expense, shall, carry and maintain or cause to carry and maintain such other insurance coverage(s) as Lender may, in its reasonable discretion, deem necessary or appropriate in such amounts, with such companies and in such form as Lender deems satisfactory in its sole and absolute discretion, all at Borrower's sole expense. Each of the policies required under all subparagraphs of this Section 3.5 shall provide that no cancellation thereof shall be effective without thirty (30) days' prior written notice to Lender, and Borrower shall deliver evidence of full payment of premiums not later than the date of this Mortgage.

**(g) RIGHT OF LENDER TO PURCHASE INSURANCE. UNLESS BORROWER PROVIDES LENDER WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY THIS MORTGAGE, LENDER MAY PURCHASE INSURANCE AT BORROWER'S EXPENSE TO PROTECT LENDER'S INTERESTS IN THE MORTGAGED PROPERTY. THIS INSURANCE MAY, BUT NEED NOT, PROTECT BORROWER'S INTERESTS IN THE MORTGAGED PROPERTY. THE COVERAGE PURCHASED BY LENDER MAY NOT PAY ANY CLAIMS THAT BORROWER MAKES OR ANY CLAIM THAT IS MADE AGAINST BORROWER IN CONNECTION WITH THE MORTGAGED PROPERTY. BORROWER MAY LATER CANCEL ANY SUCH INSURANCE PURCHASED BY LENDER, BUT ONLY AFTER PROVIDING**

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LENDER WITH EVIDENCE THAT BORROWER HAS OBTAINED INSURANCE AS REQUIRED BY THIS MORTGAGE. IF LENDER PURCHASES INSURANCE FOR THE MORTGAGED PROPERTY, BORROWER WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES THAT LENDER MAY 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 THE SECURED INDEBTEDNESS. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE BORROWER MAY BE ABLE TO OBTAIN ON ITS OWN.

**Section 3.6 Condemnation and Eminent Domain.** Any and all awards heretofore or hereafter made or to be made to the present or any subsequent owner of the Mortgaged Property by any governmental or other lawful authority for the taking, by condemnation or eminent domain of all or any part of the Mortgaged Property, (including any award from the United States government at any time after the allowance of a claim therefor, the ascertainment of the amount thereof and the issuance of a warrant for payment thereof), are hereby assigned by Borrower to Lender, which awards Lender is hereby authorized to negotiate, collect and receive from the condemnation authorities. Lender is hereby authorized to give appropriate receipts and acquittances therefor. Borrower shall give Lender immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings of which it has knowledge affecting all or any part of the Mortgaged Property (including severance of, consequential damage to or change in grade of streets), and shall immediately deliver to Lender copies of any and all papers served in connection with any such proceedings. Borrower further agrees to make, execute and deliver to Lender, free and clear of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed necessary by Lender for the purpose of validly and sufficiently assigning all awards and other compensation heretofore, now and hereafter made to Borrower for any taking, either permanent or temporary, under any such proceeding. Any such award shall be applied toward the indebtedness secured by this Mortgage or applied toward restoring the Mortgaged Property in accordance with the provisions of and in the same manner as is provided for insurance proceeds in **Section 3.5(a)** hereof. Notwithstanding the foregoing, any expenses, including, without limitation, reasonable attorneys' fees and expenses, incurred by Lender in intervening in such action or compromising and settling such action or claim, or collecting such proceeds, shall be reimbursed to Lender first out of the proceeds.

**Section 3.7 Maintenance of Property.** Except as contemplated under the Loan Agreement, no portion of the Mortgaged Property shall be altered, removed or demolished, severed, removed, sold or mortgaged, without the prior written consent of Lender. In the event of the demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered by this Mortgage or by any separate security agreement executed in conjunction herewith, the same shall be replaced promptly by similar fixtures, chattels and articles of personal property at least equal in value, quality and condition to those replaced, free from any other security interest therein, encumbrances thereon or reservation of title thereto. Borrower shall, promptly repair, restore or rebuild any building or other improvement or any part thereof now or hereafter situated on the Premises that may become damaged or be destroyed whether or

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not proceeds of insurance are available or sufficient for such purpose. Any such building or other improvement or any part thereof shall be repaired, restored or rebuilt so as to be of at least equal value and of substantially the same character as prior to such damage or destruction. Borrower and Lender acknowledge and agree that in there event there is any conflict between the terms of this **Section 3.7** and the terms of the Loan Agreement, the terms of the Loan Agreement shall control.

Borrower further agrees not to permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or any part thereof, to keep and maintain the Mortgaged Property and every part thereof in good repair and condition, to effect such repairs as Lender may reasonably require, and, from time to time, to make all necessary and proper replacements thereof and additions thereto so that the Premises and such buildings, other improvements, fixtures, chattels and articles of personal property will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed.

**Section 3.8 Compliance with Laws.** Borrower shall: (i) comply with, all statutes, ordinances, regulations, rules, orders, decrees and other requirements relating to the Mortgaged Property, or any part thereof, by any federal, state or local authority, including, without limitation, the Americans with Disabilities Act of 1990, and (ii) observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, without limitation, zoning variances, special exceptions, and nonconforming uses), privileges, franchises and concessions that are applicable to the Mortgaged Property or that have been granted to or contracted for by Borrower in connection with any existing or presently contemplated use of the Mortgaged Property or any part thereof. Borrower shall not initiate or acquiesce in any changes to or termination of any of the foregoing or of zoning design actions affecting the use of the Mortgaged Property or any part thereof without the prior written consent of Lender.

**Section 3.9 Liens and Transfers.** Without Lender's prior written consent, Borrower shall not, directly or indirectly, create, suffer or permit to be created or filed or to remain against the Mortgaged Property, or any part thereof, hereafter any mortgage lien or other lien, encumbrance or charge on, pledge of, or conditional sale or other title retention agreement with respect to the Mortgaged Property, whether superior or inferior to the lien of this Mortgage; provided, however, that Borrower may, within ten (10) days after the filing thereof, contest in good faith by appropriate legal or administrative proceedings any lien claim arising from any work performed, material furnished or obligation incurred by Borrower upon furnishing Lender a bond issued by a company approved by Lender in its reasonable discretion covering the lien claim, or an endorsement to Lender's title insurance policy insuring Lender's interest in the Premises insuring over said lien claim, each in form and substance satisfactory to Lender in its reasonable discretion, or such other security and indemnification satisfactory to Lender, in its reasonable discretion, for the final payment and discharge thereof. In the event Borrower hereafter creates, suffers or permits any superior or inferior lien to be attached to the Mortgaged Property or any part thereof without such consent or without furnishing security as aforesaid, Lender shall have the unqualified right, at its option, to accelerate the maturity of the Note, causing the entire principal balance thereof and all interest accrued thereon to be immediately due and payable.

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If Borrower, without Lender's prior written consent, sells, leases, transfers, conveys, assigns, pledges, hypothecates or otherwise disposes of the title to all or any portion of the Mortgaged Property, whether by operation of law, voluntarily or otherwise, or any interest (beneficial or otherwise) thereto, or enters into any agreement to do any of the foregoing which will not result in payment in full of the Loan, Lender shall have the unqualified right, at its option, to accelerate the maturity of the Note, causing the entire principal balance, and accrued interest to be immediately due and payable. Without limiting the generality of the foregoing, each of the following events shall be deemed a sale, transfer, conveyance, assignment, pledge, hypothecation or other disposition prohibited by the foregoing sentence:

- (a) if Borrower is a corporation, any sale, conveyance, assignment or other transfer of all or any portion of the stock of such corporation, that results in a material change in the identity of the person(s) or entities in control of such corporation, or any corporation which controls Borrower;
- (b) if Borrower is a partnership, any sale, conveyance, assignment or other transfer of all or any portion of the partnership interest of Borrower or any entity or entities in control of Borrower, or any partnership which controls Borrower;
- (c) if Borrower is a limited liability company, any sale, conveyance, assignment or other transfer of all or any portion of the membership interest of any member of Borrower;
- (d) any sale, conveyance, assignment or other transfer of all or any portion of the stock, partnership or membership interest of any entity directly or indirectly in control of any corporation, partnership or limited liability company constituting Borrower or any corporation, partnership or limited liability company which controls Borrower, or any sale, conveyance, assignment or other transfer by Borrower in any corporation, partnership or limited liability company in which Borrower has a controlling interest, directly or indirectly; and
- (e) any hypothecation of all or any portion of any stock, partnership or membership interest of Borrower, or of all or any portion of the stock, partnership or membership interest of any entity directly or indirectly in control of such corporation, partnership or limited liability company or any corporation, partnership or limited liability company which controls Borrower, or any sale, conveyance, assignment or other transfer by Borrower in any corporation, partnership or limited liability company in which Borrower has a controlling interest, directly or indirectly.

Notwithstanding the foregoing, Lender consents to any transfers of interests in Borrower or in the members of Borrower (a) from minority owners of Borrower to other owners of Borrower, or (b) to immediate family members of the members, partners, shareholders, beneficiaries or trustees of any such members upon the death or incapacity of any such member, partner, shareholder, beneficiary or trustee or for estate planning purposes (immediate family members meaning spouses, children and/or grandchildren of said individuals) provided Guarantor retains control of Borrower, and no such transfers shall be deemed to be prohibited transfers. In addition to the foregoing, Borrower and Lender acknowledge and agree that each

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Borrower (other than City Pads II LLC, a Delaware limited liability company) shall have the right to transfer their membership interest to City Pads Portfolio Fund I LLC, a Delaware limited liability company (the "**Fund**") without the prior consent of Lender provided (i) prior to the initial transfer of such membership interests to the Fund, the Fund is added as an additional Borrower under the Loan, Borrower agreeing to execute any and all documents deemed reasonably necessary by Lender to effectuate and evidence such modification, and (ii) subsequent to the aforesaid initial transfer, Borrower shall provide Lender with written notice of such a transfer within five (5) business days of any such transfer.

Any waiver by Lender of the provisions of this **Section 3.9** shall not be deemed to be a waiver of the right of Lender in the future to insist upon strict compliance with the provisions hereof.

**Section 3.10 Subrogation to Prior Lienholder's Rights.** If the proceeds of the Loan secured hereby or any part thereof, or any amount paid out or advanced by Lender is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then Lender shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

**Section 3.11 Lender's Dealings with Transferee.** In the event of the sale or transfer, by operation of law, voluntarily or otherwise, of all or any part of the Mortgaged Property, Lender shall be authorized and empowered to deal with the vendee or transferee with regard to the Mortgaged Property, the indebtedness secured hereby and any of the terms or conditions hereof as fully and to the same extent as it might with Borrower, without in any way releasing or discharging Borrower from its covenants hereunder, specifically including those contained in **Section 3.9** hereof, and without waiving Lender's right of acceleration pursuant to **Section 3.9** hereof.

**Section 3.12 Stamp Taxes.** If at any time the United States government or any federal, state or municipal governmental subdivision requires Internal Revenue or other documentary stamps, levies or any tax on this Mortgage or on the Note, or requires payment of the United States Interest Equalization Tax on any of the indebtedness secured hereby, then such indebtedness and all interest accrued thereon shall be and become due and payable, at the election of Lender, thirty (30) days after the mailing by Lender of notice of such election to Borrower; provided, however, that such election shall be unavailing, and this Mortgage and the Note shall be and remain in effect, if Borrower may and does lawfully pay for such stamps or tax, including interest and penalties thereon, to or on behalf of Lender.

**Section 3.13 Change in Tax Laws.** In the event of the enactment, after the date of this Mortgage, of any law of the state in which the Premises are located deducting from the value of the Premises, for the purpose of taxation, the amount of any lien thereon, or imposing upon Lender the payment of all or any part of the taxes, assessments, charges or liens hereby required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Borrower's interest in the Mortgaged Property, or the manner of collection of taxes, so as to affect this Mortgage or the indebtedness secured hereby or the holder thereof, then Borrower, upon demand by Lender, shall pay such taxes, assessments,

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charges or liens, or reimburse Lender therefor; provided, however, that if, in the opinion of counsel for Lender, it might be unlawful to require Borrower to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Lender may elect, by notice in writing given to Borrower, to declare all of the indebtedness secured hereby to become due and payable thirty (30) days after the giving of such notice. Nothing contained in this **Section 3.13** shall be construed as obligating Lender to pay any portion of Borrower's federal, state or local income tax.

**Section 3.14 Inspection of Property.** Borrower shall permit Lender and its representatives and agents to inspect the Mortgaged Property from time to time upon reasonable prior telephonic notice during normal business hours and as frequently as Lender considers reasonable.

**Section 3.15 Inspection of Books and Records.** Borrower shall keep and maintain full and correct books and records showing in detail the income and expenses of the Mortgaged Property and after demand therefor by Lender shall permit Lender and its agents and representatives to visit its offices, discuss its financial affairs with its officers and independent public accountants whether or not any representative of Borrower is present and to examine such books and records and all supporting vouchers and data, copies of any leases encumbering the Premises and such other information as Lender may deem reasonably necessary or appropriate at any time and from time to time on Lender's request at Borrower's offices, at the address hereinabove identified or at such other location as may be reasonably requested by Lender.

**Section 3.16 Financial Information.** Borrower shall furnish to Lender any and all financial information required pursuant to the terms of the Loan Agreement.

**Section 3.17 Acknowledgment of Debt.** Borrower shall furnish from time to time, within ten (10) days after Lender's request, a written statement, duly acknowledged, specifying the amount due under the Note, this Mortgage and any of the other Loan Documents and disclosing whether any alleged offsets or defenses exist against the indebtedness secured hereby.

**Section 3.18 Other Amounts Secured; Maximum Indebtedness.** Borrower acknowledges and agrees that this Mortgage secures the entire principal amount of the Note and interest accrued thereon, regardless of whether any or all of the loan proceeds are disbursed on or after the date hereof, and regardless of whether the outstanding principal is repaid in whole or part and future advances made at a later date, as well as any amounts owed to Lender pursuant to **Sections 3.2 and 3.4** hereof, any and all litigation and other expenses pursuant to **Sections 4.5 and 4.6** hereof 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 Documents. Under no circumstances, however, shall the total indebtedness secured hereby exceed Fifteen Million and No/100 Dollars (\$15,000,000.00).

**Section 3.19 Declaration of Subordination.** At the option of Lender, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to



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priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Mortgaged Property upon the execution by Lender and recording thereof, at any time hereafter, in the appropriate official records of the county wherein the Premises are situated, of a unilateral declaration to that effect.

**Section 3.20 Releases.** Lender, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens thereon, may release from the liens of Lender all or any part of the Mortgaged Property, or release from liability any person or entity obligated to repay any indebtedness secured hereby, without in any way affecting the liability of any party pursuant to the Note, this Mortgage or any of the other Loan Documents, including, without limitation, any guaranty given as additional security for the indebtedness secured hereby, and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party liable therefor to extend the time for payment of any part or all of such indebtedness. Any such agreement shall not in any way release or impair the lien created by this Mortgage or reduce or modify the liability of any person or entity obligated personally to repay the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest, subject to the indebtedness secured hereby, in the Mortgaged Property.

**Section 3.21 Borrower's Representations.** Borrower hereby represents and covenants to Lender that:

(a) Borrower is lawfully seized of the Mortgaged Property hereby mortgaged, granted and conveyed and has the right to mortgage, grant and convey the Mortgaged Property, that the Mortgaged Property is unencumbered except by the Permitted Encumbrances, if any, and that Borrower will represent, warrant and defend generally the title to the Mortgaged Property, or any portion thereof, against any and all claims and demands, subject only to the Permitted Encumbrances, if any.

(b) Each Borrower is a duly organized and validly existing Delaware limited liability company, and is qualified to do business in and in good standing in the State of Illinois. Each Borrower has full power and authority to conduct its business as presently conducted, to develop the Project, to enter into this Agreement and to perform all of its duties and obligations hereunder and under the Loan Documents, all of which actions have been duly authorized by all necessary approvals. The copy of each of Borrower's articles of organization and operating agreement delivered to Lender are true and correct and in all respects what each purports to be and are in full force and effect and have not been amended or modified in any respect.

(c) The execution, delivery and performance of the Note, this Mortgage and the other Loan Documents: (i) have received all necessary trust, partnership, governmental, company, and corporate approval; (ii) do not violate any provision of any law, any order of any court or agency of government or any indenture, agreement or other instrument to which Borrower is a party, or by which it or any portion of the Mortgaged Property is bound; and (iii) are not in conflict with, nor will result in breach of, or constitute (with due notice or lapse of time) a default under any indenture, agreement, or other instrument, or result in the creation or imposition of any lien, charge or

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encumbrance of any nature whatsoever, upon any of its property or assets, except as contemplated by the provisions of this Mortgage.

(d) The Note, this Mortgage and the other Loan Documents, when executed and delivered by Borrower will constitute the legal, valid and binding obligations of Borrower and all other obligors named therein, if any, in accordance with their respective terms.

(e) All information, reports, papers, balance sheets, statements of profit and loss, and data given to Lender or its agents and employees regarding Borrower or any other party obligated under the terms of the Note, this Mortgage or any of the other Loan Documents are accurate and correct in all material respects, and are complete insofar as completeness may be necessary to give Lender a true and accurate knowledge of the subject matter.

(f) There is not now pending against or affecting Borrower or any other party obligated under the terms of the Note, this Mortgage or any of the other Loan Documents, nor, to the best of Borrower's knowledge, is there threatened any action, suit or proceeding at law, in equity or before any administrative agency which, if adversely determined, would materially impair or affect the financial condition or operation of Borrower or the Mortgaged Property.

(g) Borrower is not now, nor has ever been (i) listed on any Government Lists, (ii) a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order #13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations promulgated in accord therewith or in any enabling legislation or other Presidential Executive Orders in respect thereof, (iii) indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense, or (iv) under investigation by any governmental authority for alleged criminal activity. For purposes hereof, the term "**Patriot Act Offense**" means any violation of the criminal laws of the United States of America or any of the several states or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states relating to terrorism or the laundering of monetary instruments, including any offense under (A) the criminal laws against terrorism, (B) the criminal laws against money laundering, (C) the Bank Secrecy Act, as amended, (D) the Money Laundering Control Act of 1986, as amended or (E) the Patriot Act (as said term is defined in **Section 3.28** hereof).

"Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit a Patriot Act Offense. For purposes hereof, the term "**Government Lists**" means (1) the specially designated nationals and blocked persons lists maintained by the Office of Foreign Assets Controls, (2) other lists of terrorists, terrorist organizations or narcotic traffickers maintained pursuant to any of the rules and regulations of the Office of Foreign Assets Controls that Lender notify Borrower in writing is now included in "Government Lists" or (3) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other government authority or pursuant to any Executive Order

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of the President of the United States that Lender notify Borrower in writing is now included in "Government Lists."

**Section 3.22 Utilities.** Borrower will pay all utility charges incurred in connection with the Premises and all improvements thereon, and shall maintain all utility services now or hereafter available for use at the Premises.

**Section 3.23 Assignment of Rents.** Borrower acknowledges that, concurrently herewith, Borrower is delivering to Lender, as additional security for the repayment of the Loan, an Assignment of Rents and Leases (the "Assignment") pursuant to which Borrower has assigned to Lender, interests in the leases, rents and income from the Mortgaged Property. All of the provisions of the Assignment are hereby incorporated herein as if fully set forth at length in the text of this Mortgage. Borrower agrees to abide by all of the provisions of the Assignment.

**Section 3.24 Security Agreement.** (a) This Mortgage shall be deemed a "Security Agreement" as defined in revised Article 9 of the Illinois Uniform Commercial Code, (the "Illinois Uniform Commercial Code") and creates a security interest in favor of Lender in all property including, without limitation, all personal property, fixtures and goods affecting property either referred to or described herein or in any way connected with the use or enjoyment of the Mortgaged Property. The remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be as prescribed herein or by general law or, as to such part of the security which is also reflected in any Financing Statement filed to perfect the security interest herein created, by the specific statutory consequences now or hereinafter enacted and specified in the Illinois Uniform Commercial Code, all at Lender's sole election. Borrower and Lender agree that the filing of such a Financing Statement in the records normally having to do with personal property shall not be construed as in any way derogating from or impairing the intention of the parties hereto that everything used in connection with the production of income from the Premises or adapted for use therein or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Lender, or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) the rights in or the proceeds of any fire or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Borrower's interest as lessor in any present or future lease or rights to income growing out of the use or occupancy of the Mortgaged Property whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Lender under this Mortgage or impugning the priority of Lender's lien granted hereby or by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of Lender in the event any court or judge shall at any time hold with respect to (1), (2) and (3) that notice of Lender's priority of interest to be effective against a particular class of persons, including, but not limited to, the Federal Government and any subdivisions or entity of the Federal Government, must be filed in the Illinois Uniform Commercial Code records.

(b) Borrower shall execute, acknowledge and deliver to Lender, within ten (10) days after request by Lender, any and all security agreements, financing statements and any other

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similar security instruments reasonably required by Lender, in form and of content reasonably satisfactory to Lender, covering all property of any kind whatsoever owned by Borrower that, in the reasonable opinion of Lender, is essential to the operation of the Mortgaged Property and concerning which there may be any doubt whether title thereto has been conveyed, or a security interest therein perfected, by this Mortgage under the laws of the state in which the Premises are located. Borrower shall further execute, acknowledge and deliver any financing statement, affidavit, continuation statement, certificate or other document as Lender may request in order to perfect, preserve, maintain, continue and extend such security instruments. Borrower further agrees to pay to Lender all fees, costs and expenses (including, without limitation, all reasonable attorneys' fees and expenses and court costs) incurred by Lender in connection with the preparation, execution, recording, filing and re-filing of any such document.

(c) Borrower shall, at any time and from time to time, take such steps as Lender may require for Lender to insure the continued perfection and priority of Lender's security interest in any of Borrower's property and of the preservation of its rights therein.

**Section 3.25 Fixture Financing Statement.** From the date of its recording, this Mortgage shall be effective as a fixture financing statement with respect to all goods constituting part of the Mortgaged Property which are or are to become fixtures related to the real estate described herein. For this purpose, the following information is set forth:

(a) Name and Address of Debtor:

City Pads II LLC  
c/o City Pads II LLC  
906 West Belmont Avenue  
Chicago, Illinois 60657

And:

300 Madison Investors LLC  
c/o City Pads II LLC  
906 West Belmont Avenue  
Chicago, Illinois 60657

And:

1854 W., 18<sup>th</sup> Investors LLC  
c/o City Pads II LLC  
906 West Belmont Avenue  
Chicago, Illinois 60657

And:

3126 W. Walton Investors LLC  
c/o City Pads II LLC  
906 West Belmont Avenue  
Chicago, Illinois 60657

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(b) Name and Address of Secured Party:

Associated Bank, National Association  
525 West Monroe Street  
24<sup>th</sup> Floor  
Chicago, Illinois 60661

(c) This document covers goods which are or are to become fixtures.

**Section 3.26 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 any amount ("**Excess Interest**") 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. 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 3.26** 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 (as that term is defined in the Note) shall be subject to automatic reduction to the maximum lawful contract rate allowed under the applicable usury laws of the aforesaid State, 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 Loan Documents shall have any action against Lender for any damages whatsoever arising out of the payment or collection of any Excess Interest.

**Section 3.27 Construction Loan Agreement.** Borrower acknowledges and agrees that the Loan proceeds shall be disbursed in accordance with the terms and conditions set forth in the Loan Agreement. In connection with said Loan Agreement, Borrower hereby covenants and agrees as follows:

(a) Borrower will comply or will cause compliance with all of the covenants of the Loan Agreement;

(b) Borrower will cause the construction of improvements in accordance with the Loan Agreement; and

All sums advanced or incurred or other obligations created for which Lender is liable under the Loan Agreement from time to time shall be secured by this Mortgage and the other Loan Documents.

**Section 3.28 Patriot Act.** Borrower shall use its good faith and commercially reasonable efforts to comply with the Patriot Act and all applicable requirements of governmental

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authorities having jurisdiction over Borrower and/or the Premises, including those relating to money laundering and terrorism. In the event that Borrower fails to comply with the Patriot Act or any such requirements of governmental authorities, then Lender may, at its option, cause Borrower to comply therewith and any and all costs and expenses incurred by Lender in connection therewith shall be secured by this Mortgage and shall be immediately due and payable. For purposes of this **Section 3.28**, "**Patriot Act**" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA Patriot Act) of 2001 as the same may be amended from time to time in corresponding provisions of future laws.

**Section 3.29 Partial Releases of Buildings.** Notwithstanding anything to the contrary contained herein, Borrower intends on selling individual Buildings (as defined in the Loan Agreement) and the Premises on which such Buildings are located upon. In connection therewith, Borrower and Lender agree that provided there is not then existing any Default hereunder, Lender agrees to release individual Buildings and their related Premises from the lien of this Mortgage pursuant to the following terms and provisions:

(a) Borrower shall deliver to Lender a payment in the amount required in the Loan Agreement; and

(b) Any and all documents and agreements used in connection with any partial release pursuant to this **Paragraph 3.29** shall be in form and substance reasonably satisfactory to provide for the release of the appropriate portion of the Mortgaged Property.

## IV

### DEFAULTS AND REMEDIES

**Section 4.1 Events Constituting Defaults.** Each of the following events shall constitute a default (a "**Default**") under this Mortgage:

(a) Failure of Borrower to pay when due, and the expiration of any applicable cure period, any sum secured hereby, including, but not limited to, any installment of principal or interest or both thereon, and the continuation of such failure for a period of ten (10) or more days;

(b) Failure of Borrower to comply with any of the requirements of **Section 3.9**;

(c) Failure of Borrower to perform or observe any other covenant or other provision contained in this Mortgage and not otherwise covered in any of the other provisions of this **Section 4.1**; provided if such default is capable of being cured, Borrower shall have a period of sixty (60) days after the date on which written notice of the nature of such failure is given by Lender to Borrower to cure such default; if any, provided and, if such default is by its nature is capable of being cured but cannot be cured within said sixty (60) day period and Borrower diligently commences and prosecutes

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such cure during said sixty (60) day period, Borrower shall have an additional thirty (30) days to cure such default, but in no event shall the period to cure any such default exceed ninety (90) days after the date Lender's notice is given to Borrower;

(d) The occurrence of any default or event of default under the terms of any of the Loan Documents after the expiration of the applicable notice and grace period, if any;

(e) Untruth or material deceptiveness of any representation or warranty contained in the Note, this Mortgage or any other Loan Document, or any writing pertaining to the foregoing submitted to Lender by or on behalf of Borrower or any Guarantor;

(f) Admission by Borrower or any Guarantor in writing, including, without limitation, an answer or other pleading filed in any court, of such Borrower's or any such Guarantor's insolvency or inability to pay its debts generally as they fall due;

(g) Institution by Borrower or any Guarantor of bankruptcy, insolvency, reorganization or arrangement proceedings of any kind under the Federal Bankruptcy Code, whether as now existing or as hereafter amended, or any similar debtors' or creditors' rights law, whether federal or state, now or hereafter existing, or the making by Borrower or any Guarantor of a general assignment for the benefit of creditors;

(h) Institution of any proceedings described in **Section 4.01(f)** against Borrower or any Guarantor that are consented to by Borrower or any Guarantor;

(i) Appointment by any court of a receiver, trustee or liquidator of or for, or assumption by any court of jurisdiction of, all or any part of the Mortgaged Property or all or a major portion of the property of Borrower or any Guarantor if such appointment or assumption is consented to by Borrower or any Guarantor or if, within thirty (30) days after such appointment or assumption, such receiver, trustee or liquidator is not discharged or such jurisdiction is not relinquished, vacated or stayed;

(j) Declaration by any court or governmental agency of the bankruptcy or insolvency of Borrower or any Guarantor;

(k) The dissolution, death or adjudicated incompetency of Borrower or any Guarantor or performance of the obligations under, this Mortgage or the other Loan Documents, unless within sixty (60) days of the death, bankruptcy or insolvency of such Guarantor, Borrower provides to Lender any one of the following which must be acceptable to Lender in its sole and absolute discretion: (a) a replacement guarantor, or (b) assumption of such Guarantor's liability pursuant to this Guaranty by Guarantor's estate, or (c) all remaining guarantors assume such Guarantor's liability pursuant to this Guaranty in a manner acceptable to Lender, or (d) Borrower furnishes additional collateral.

**Section 4.2 Acceleration of Maturity.** Upon the occurrence of any Default, at the election of Lender, the entire principal balance then outstanding under the Note, together with all unpaid interest accrued thereon and all other sums due from Borrower thereunder, under this

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Mortgage or any other Loan Document shall become immediately due and payable with interest thereon at the Default Interest Rate.

**Section 4.3 Foreclosure of Mortgage.** Upon the occurrence of any Default, or at any time thereafter, Lender may, at its option, proceed to foreclose the lien of this Mortgage by judicial proceedings in accordance with the laws of the state in which the Premises are located and to exercise any other remedies of Lender provided herein or in the other Loan Documents, or which Lender may have at law or in equity. Any failure by Lender to exercise such option shall not constitute a waiver of its right to exercise the same at any other time.

**Section 4.4 Lender's Continuing Options.** The failure of Lender to declare a Default or exercise any one or more of its options to accelerate the maturity of the indebtedness secured hereby and to foreclose the lien hereof following any Default as aforesaid, or to exercise any other option granted to Lender hereunder in any one or more instances, or the acceptance by Lender of partial payments of such indebtedness, shall neither constitute a waiver of any such Default or of Lender's options hereunder nor establish, extend or affect any grace period for payments due under the Note, but such options shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Lender, may, at Lender's option, be rescinded by written acknowledgment to that effect by Lender and shall not affect Lender's right to accelerate maturity upon or after any future Default.

**Section 4.5 Litigation Expenses.** In any proceeding to foreclose the lien of this Mortgage or enforce any other remedy of Lender under the Note, this Mortgage, the other Loan Documents or in any other proceeding whatsoever in connection with the Mortgaged Property in which Lender is named as a party, there shall be allowed and included, as additional indebtedness secured hereby in the judgment or decree resulting therefrom, all reasonable expenses paid or incurred in connection with such proceeding by or on behalf of Lender, including, without limitation, reasonable attorney's fees and expenses and court costs, appraiser's fees, outlays for documentary evidence and expert advice, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title searches and examinations, title insurance policies and any similar data and assurances with respect to title to the Premises as Lender may deem reasonably necessary, and any other expenses and expenditures which may be paid or incurred by or on behalf of Lender and permitted by the IMF Law (as such term is hereinafter defined in **Section 4.9** to be included in the decree of sale, either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to any such decree the true condition of the title to or value of the Premises or the Mortgaged Property. All expenses of the foregoing nature, and such expenses as may be incurred in the protection of any of the Mortgaged Property and the maintenance of the lien of this Mortgage thereon, including, without limitation, the reasonable fees and expenses of, and court costs incurred by, any attorney employed by Lender in any litigation affecting the Note, this Mortgage or any of the other Loan Documents or any of the Mortgaged Property, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith, shall be immediately due and payable by Borrower with interest thereon at the Default Interest Rate.

**Section 4.6 Performance by Lender.** In the event of any Default, or in the event any action or proceeding is instituted which materially affects, or threatens to materially



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affect, Lender's interest in the Mortgaged Property, Lender may, but need not, make any payment or perform any act on Borrower's behalf in any form and manner deemed expedient by Lender, and Lender may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any; purchase, discharge, compromise or settle any tax lien or other prior or junior lien or title or claim thereof; redeem from any tax sale or forfeiture affecting the Mortgaged Property; or contest any tax or assessment thereon. All monies paid for any of the purposes authorized herein and all expenses paid or incurred in connection therewith, including without limitation reasonable attorneys' fees and court costs, and any other monies advanced by Lender to protect the Mortgaged Property and the lien of this Mortgage, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Borrower to Lender without notice and with interest thereon at the Default Interest Rate from the date an advance is made to and including the date the same is paid. The action or inaction of Lender shall never be construed to be a waiver of any right accruing to Lender by reason of any default by Borrower. Lender shall not incur any personal liability because of anything it may do or omit to do hereunder, nor shall any acts of Lender act as a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage or to proceed to foreclose this Mortgage.

**Section 4.7 Right of Possession.** In any case in which, under the provisions of this Mortgage, Lender has a right to institute foreclosure proceedings, whether or not the entire principal sum secured hereby becomes immediately due and payable as aforesaid, or whether before or after the institution of proceedings to foreclose the lien hereof or before or after sale thereunder, Borrower shall, forthwith upon demand of Lender, surrender to Lender, and Lender shall be entitled to take actual possession of, the Mortgaged Property or any part thereof, personally or by its agent or attorneys, and Lender, in its discretion, may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers and accounts of Borrower or the then owner of the Mortgaged Property relating thereto, and may exclude Borrower, such owner and any agents and servants thereof wholly therefrom and may, as attorney-in-fact or agent of Borrower or such owner, or in its own name as Lender and under the powers herein granted:

- (a) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, whether legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits and avails of the Mortgaged Property, including, without limitation, actions for recovery of rent, and actions in forcible detainer, all without notice to Borrower;
- (b) cancel or terminate any lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Borrower to cancel the same;
- (c) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Property made subsequent to this Mortgage or subordinated to the lien hereof, subject to the terms of any subordination, non-disturbance and attornment then in effect;

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(d) extend or modify any then existing leases and make new leases of all or any part of the Mortgaged Property, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, 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, all persons whose interests in the Mortgaged Property are subject to the lien hereof and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness secured hereby, satisfaction of any foreclosure decree or issuance of any certificate of sale or deed to any such purchaser; and

(e) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements in connection with the Mortgaged Property as may seem judicious to Lender, to insure and reinsure the Mortgaged Property and all risks incidental to Lender's possession, operation and management thereof, and to receive all rents, issues, deposits, profits and avails therefrom.

Without limiting the generality of the foregoing, Lender shall have all right, power, authority and duties as provided in the Illinois Mortgage Foreclosure Law, as amended (Illinois Compiled Statutes 735 ILCS 5/15 1101, et. Seq.) (the "IMFL"). Nothing herein contained shall be construed as constituting Lender as mortgagee in possession in the absence of the actual taking of possession of the Premises.

**Section 4.8 Priority of Payments.** Any rents, issues, deposits, profits and avails of the Property received by Lender after taking possession of all or any part of the Mortgaged Property, or pursuant to any assignment thereof to Lender under the provisions of this Mortgage shall be applied in payment of or on account of the following, in such order as Lender or, in case of a receivership, as the court, may in its sole and absolute discretion determine:

(a) operating expenses of the Mortgaged Property (including, without limitation, reasonable compensation to Lender, any receiver of the Mortgaged Property, any agent or agents to whom management of the Mortgaged Property has been delegated, and also including lease commissions and other compensation for and expenses of seeking and procuring tenants and entering into leases, establishing claims for damages, if any, and paying premiums on insurance hereinabove authorized);

(b) taxes, special assessments, water and sewer charges now due or that may hereafter become due on the Mortgaged Property, or that may become a lien thereon prior to the lien of this Mortgage;

(c) any and all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Mortgaged Property (including, without limitation, the cost, from time to time, of installing or replacing any personal property therein, and of placing the Mortgaged Property in such condition as will, in the judgment of Lender or any receiver thereof, make it readily rentable or salable);

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(d) any indebtedness secured by this Mortgage or any deficiency that may result from any foreclosure sale pursuant hereto; and

(e) any remaining funds to Borrower or its successors or assigns, as their interests and rights may appear.

**Section 4.9 Appointment of Receiver.** Upon or at any time after the filing of any complaint to foreclose the lien of this Mortgage, the court may appoint upon petition of Lender, and at Lender's sole option, a receiver of the Mortgaged Property pursuant to the IMF Law. Such appointment may be made either before or after sale, without notice; 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 secured hereby; 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 IMF Law, 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 indebtedness secured by this Mortgage, 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 may be 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 lessees 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, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree or issuance of certificate of sale or deed to any purchaser.

**Section 4.10 Foreclosure Sale.** In the event of any foreclosure sale of the Mortgaged Property, the same may be sold in one or more parcels. Lender may be the purchaser at any foreclosure sale of the Mortgaged Property or any part thereof.

**Section 4.11 Application of Proceeds.** The proceeds of any foreclosure sale of the Mortgaged Property, or any part thereof, shall be distributed and applied in the following order of priority: (a) on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in **Sections 4.5 and 4.6** hereof; (b) all other items that, under the terms of this Mortgage, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon at the Default Interest Rate; (c) all principal and interest, together with any prepayment charge, remaining unpaid under the Note, in the order of priority specified

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by Lender in its sole and absolute discretion; and (d) the balance, if any, to Borrower or its successors or assigns, as their interests and rights may appear.

**Section 4.12 Application of Deposits.** In the event of any Default, Lender may, at its option, without being required to do so, apply any monies or securities that constitute deposits made to or held by Lender or any depository pursuant to any of the provisions of this Mortgage toward payment of any of Borrower's obligations under the Note, this Mortgage or any of the other Loan Documents in such order and manner as Lender may elect in its sole and absolute discretion. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Borrower or to the then owner or owners of the Mortgaged Property. Such deposits are hereby pledged as additional security for the prompt payment of the indebtedness evidenced by the Note and any other indebtedness secured hereby and shall be held to be applied irrevocably by such depository for the purposes for which made hereunder and shall not be subject to the direction or control of Borrower.

**Section 4.13 Indemnification.** Borrower will indemnify and hold Lender harmless from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees, expenses and court costs) incurred by or asserted against Lender by reason of (a) the ownership of the Mortgaged Property or any interest therein or receipt of any rents, issues, proceeds or profits therefrom; (b) any accident, injury to or death of persons, or loss of or damage to property occurring in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, adjacent parking areas or streets; (c) any use, non-use or condition in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, adjacent parking areas or streets; (d) any failure on the part of Borrower to perform or comply with any of the terms of this Mortgage; or (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof. Any amounts owed to Lender by reason of this **Section 4.13** shall constitute additional indebtedness which is secured by this Mortgage and shall become immediately due and payable upon demand therefor, and shall bear interest at the Default Interest Rate from the date such loss or damage is sustained by Lender until paid. The obligations of Borrower under this **Section 4.13** shall survive any termination or satisfaction of this Mortgage.

**Section 4.14 Waiver of Right of Redemption and Other Rights** To the full extent permitted by law, Borrower agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Borrower hereby expressly waives any and all rights it may have to require that the Premises be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Borrower hereby expressly waives any and all rights of redemption under the IMF Law, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Borrower and on behalf of each and every person

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acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Borrower and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Borrower agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. 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 acknowledges that the Premises do not constitute agricultural real estate as defined in Section 5/15-1201 of the IMF law or residential real estate as defined in Section 5/15-1219 of the IMF Law.

V

## MISCELLANEOUS

**Section 5.1 Notices.** Any notice that Lender or Borrower may desire or be required to give to the other hereunder shall be deemed given (i) upon receipt when delivered or if sent by nationally recognized overnight air courier, or (ii) two (2) business days after being deposited in the United States certified mail, return receipt requested, properly addressed to the party, at the address of such party set forth below, or at such other address, as the party to whom notice is to be given has specified by notice hereunder to the party seeking to give such notice:

|                 |  |
|-----------------|--|
| To Borrower:    | c/o City Pads II LLC<br>906 West Belmont Avenue<br>Chicago, Illinois 60657<br>Attention: Andrew Anitow   |
| With a copy to: | Arnstein & Lehr LLP<br>120 South Riverside Drive<br>Suite 1200<br>Chicago, Illinois 60606<br>Attention: Barry R. Katz, Esq.                            |
| To Lender:      | Associated Bank, National<br>Association<br>525 West Monroe Street<br>24 <sup>th</sup> Floor<br>Chicago, Illinois 60661<br>Attention: Michael McGovern |
| with a copy to: | Duane Morris LLP<br>190 South LaSalle Street<br>Suite 3700<br>Chicago, Illinois 60603<br>Attention: Daniel Kohn, Esq.                                  |

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Except as otherwise specifically required herein, notice of the exercise of any right or option granted to Lender by this Mortgage is not required to be given.

**Section 5.2 Time of Essence.** It is specifically agreed that time is of the essence of this Mortgage.

**Section 5.3 Covenants Run with Land.** All of the covenants of this Mortgage shall run with the land constituting the Premises.

**Section 5.4 Governing Law; Litigation.** The place of the location of the Mortgaged Property being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State. To the extent that this Mortgage may operate as a security agreement under the Illinois Uniform Commercial Code, Lender shall have all rights and remedies conferred therein for the benefit of a secured party, as such term is defined therein. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MORTGAGE SHALL BE TRIED AND DETERMINED ONLY IN THE STATE OR FEDERAL COURT LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR AT THE SOLE OPTION OF LENDER IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 5.4.**

**Section 5.5 Rights and Remedies Cumulative.** All rights and remedies set forth in this Mortgage are cumulative, and the holder of the Note and of every other obligation secured hereby may recover judgment hereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby.

**Section 5.6 Severability.** If any provision of this Mortgage or any paragraph, sentence, clause, phrase or word, or the application thereof, is held invalid in any circumstance, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included herein.

**Section 5.7 Non-Waiver.** Unless expressly provided in this Mortgage to the contrary, no consent or waiver, whether express or implied, by any interested party referred to herein to or of any breach or default by any other interested party referred to herein regarding the performance by such party of any obligations contained herein shall be deemed a consent to or waiver of the party of any obligations contained herein or shall be deemed a consent to or waiver of the performance by such party of any other obligations hereunder or the performance by any other interested party referred to herein of the same, or of any other, obligations hereunder.

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**Section 5.8 Headings.** The headings of sections and paragraphs in this Mortgage are for convenience or reference only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

**Section 5.9 Grammar.** As used in this Mortgage, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires. Whenever the words “including”, “include” or “includes” are used in this Mortgage, they should be interpreted in a non-exclusive manner as though the words “, without limitation,” immediately followed the same.

**Section 5.10 Successors and Assigns.** This Mortgage and all provisions hereof shall be binding upon Borrower, its successors, assigns, legal representatives and all other persons or entities claiming under or through Borrower, and the word “Borrower,” when used herein, shall include all such persons and entities and any others liable for the payment of the indebtedness secured hereby or any part thereof, whether or not they have executed the Note or this Mortgage. The word “Lender,” when used herein, shall include Lender’s successors, assigns and legal representatives, including all other holders, from time to time, of the Note.

**Section 5.11 No Joint Venture.** Borrower and Lender acknowledge and agree that under no circumstances shall Lender be deemed to be a partner or joint venturer with Borrower, including, without limitation, by virtue of its becoming a mortgagee in possession or exercising any of its rights pursuant to this Mortgage or pursuant to any of the other Loan Documents, or otherwise.

**Section 5.12 Additional Fees.**

(a) Borrower agrees to pay on demand all of the reasonable out-of-pocket costs and expenses of Lender (including, without limitation, the reasonable fees and out-of-pocket expenses of Lender’s counsel) in connection with the preparation, negotiation, execution and delivery of the Note, this Mortgage, any of the other Loan Documents and all other instruments or documents provided for herein or delivered or to be delivered hereunder or in connection herewith.

(b) The reasonable costs and expenses which Lender incurs in any manner or way with respect to the following shall be part of the indebtedness secured hereby, payable by Borrower on demand if at any time after the date of this Mortgage Lender: (i) employs counsel for advice or other representation (A) with respect to the amendment or enforcement of the Note, this Mortgage or any of the other Loan Documents, (B) to represent Lender in any work-out or any type of restructuring of the Loan, or any litigation, contest, dispute, suit or proceeding or to commence, defend or intervene or to take any other action in or with respect to any litigation, contest, dispute, suit or proceeding (whether instituted by Lender, Borrower or any other person or entity) in any way or respect relating to the Note, this Mortgage, any of the other Loan Documents, Borrower’s affairs or any collateral securing the indebtedness secured hereby or (C) to enforce any of the rights of Lender with respect to Borrower; and/or (ii) seeks to enforce or enforces any of the rights and remedies of Lender with respect to Borrower. Without limiting the generality of the foregoing, such expenses, costs, charges and fees include:

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reasonable fees, costs and expenses of attorneys, accountants and consultants; court costs and expenses; court reporter fees, costs and expenses; long distance telephone charges; telegram and telecopier charges; and expenses for travel, lodging and food.

## **Section 5.13 Compliance with the Illinois Mortgage Foreclosure Law.**

(a) In the event that any provision in this Mortgage shall be inconsistent with any provisions of the IMF Law, the provision of the IMF Law, 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 IMF Law.

(b) Borrower and Lender shall have the benefit of all of the provisions of the IMF Law, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMF Law which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(c) If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of Borrower which are more limited than the rights that would otherwise be vested in Lender under the IMF Law in the absence of said provision, Lender shall be vested with the rights granted in the IMF Law to the full extent permitted by law.

(d) Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under any provisions of the IMF Law, whether incurred before or after any decree or judgment of foreclosure shall be added to the indebtedness hereby secured or by the judgment of foreclosure.

**Section 5.14 Construction Mortgage.** This is a "Construction Loan Mortgage" within the purview and operation of the Illinois Uniform Commercial Code, as amended. The proceeds of the Loan secured by this Mortgage shall be disbursed to or upon the direction of Borrower solely for the purpose of paying the cost of construction of improvements upon the Premises and related costs, pursuant to and in accordance with the Loan Agreement and any other agreements executed and delivered concurrently herewith. Borrower covenants and agrees that all of such loan proceeds will be used solely for such purpose. Accordingly, the lien created by this Mortgage shall be a first lien against all fixtures, equipment and other personal property of every kind incorporated as aforesaid, and such lien shall take precedence and be paramount and superior to any other lien, charge or security interest that any person may claim against such fixtures or personal property.

**Section 5.15 Loan Agreement.** The proceeds of the Loan are to be disbursed by Lender to Borrower in accordance with the provisions contained in the Loan Agreement. All advances and indebtedness arising and accruing under the Loan Agreement from time to time shall be secured hereby to the same extent as though the Loan Agreement were fully incorporated in this Mortgage, and the occurrence of any Default under the Loan Agreement shall constitute a



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default under this Mortgage entitling Lender to all of the rights and remedies conferred upon Lender by the terms of this Mortgage or by law, as in the case of any other default.

**Section 5.16 Revolving Credit.** The definition of “revolving credit” contained in 815 ILCS 205/4 Illinois Compiled Statutes, shall apply to this Mortgage. The lien of this Mortgage shall secure all advances made pursuant to the terms of the Loan Agreement as if such future advances were made on the date of execution of this Mortgage. Although there may be no indebtedness outstanding on the Note at the time any such advance is made, the lien of this Mortgage, as to third persons without actual notice thereof, shall be valid as to all such indebtedness and future advances from the time this Mortgage is filed for record in the office of the Cook County Recorder. The total amount of the indebtedness evidenced by the Note and secured by this Mortgage may increase or decrease from time to time but the unpaid balance so secured at any one time shall not exceed a maximum principal amount of Seven Million Five Hundred Thousand and No/100 Dollars (\$7,500,000.00) including interest thereon and any disbursements made for the payment of taxes, special assessments, insurance or other disbursements made pursuant to the terms of this Mortgage.

**Section 5.17 Recapture.** To the extent Lender receives any payment by or on behalf of Borrower, which payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to Borrower or its respective estate, trustee, receiver, custodian or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, the obligation or part thereof which has been paid, reduced or satisfied by the amount so repaid shall be reinstated by the amount so repaid and shall be included within the indebtedness hereby secured as of the date such initial payment, reduction or satisfaction occurred.

**Section 5.18 No Lien Management Agreements.** Borrower shall include a “no lien” provision in any property management agreement hereafter entered into by Borrower with a property manager for the Mortgaged Property, whereby the property manager waives and releases any and all mechanics’ lien rights that the property manager, or anyone claiming through or under the property manager, may have pursuant to 770 ILCS 60/1. Such property management agreement containing such “no lien” provision or a short form thereof shall, at Lender’s request, be recorded with the Cook County, Illinois Recorder, as appropriate.

**Section 5.19 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 any lien on or security interest in the beneficial interest of such trust.

**Section 5.20 JURY WAIVER.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF BORROWER AND LENDER HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MORTGAGE, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF BORROWER AND LENDER WITH RESPECT TO THIS MORTGAGE, OR THE TRANSACTIONS RELATED HERETO, IN EACH

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**CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF BORROWER AND LENDER HEREBY AGREES THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT BORROWER OR LENDER MAY FILE A COPY OF THIS MORTGAGE WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OF BORROWER AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.**

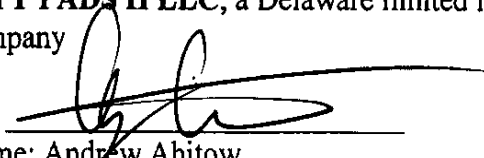
Signature page follows.

Property of Cook County Clerk's Office

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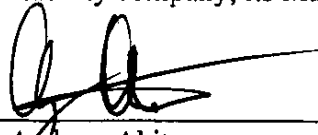
IN WITNESS WHEREOF, Borrower has executed this Mortgage as of the date and year first above written.

**CITY PADS II LLC**, a Delaware limited liability company

By:   
Name: Andrew Ahitow  
Its: Manager


**300 MADISON INVESTORS LLC**, a Delaware limited liability company

By: City Pads II LLC, a Delaware limited liability company, its Manager

By:   
Name: Andrew Ahitow  
Its: Manager

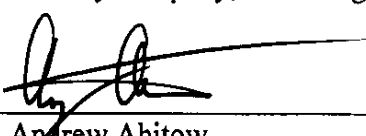
**1854 W. 13<sup>TH</sup> INVESTORS LLC**, a Delaware limited liability company

By: City Pads II LLC, a Delaware limited liability company, its Manager

By:   
Name: Andrew Ahitow  
Its: Manager

**3126 W. WALTON INVESTORS LLC**, a Delaware limited liability company

By: City Pads II LLC, a Delaware limited liability company, its Manager

By:   
Name: Andrew Ahitow  
Its: Manager

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Ricardo Perez, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Andrew Ahitow, personally known to me to be the Manager of City Pads II LLC, a Delaware limited liability company, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he has signed and delivered the said instrument as his free and voluntary act as aforesaid in his capacity as Manager of the limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 19 day of August, 2015.

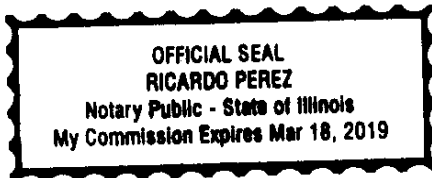


[Signature]  
Notary Public

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Ricardo Perez, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Andrew Ahitow, personally known to me to be the Manager of City Pads II LLC, a Delaware limited liability company, the Manager of 300 Madison Investors LLC, a Delaware limited liability company, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he has signed and delivered the said instrument as his free and voluntary act as aforesaid in his capacity as Manager of the limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 19 day of August, 2015.



[Signature]  
Notary Public

# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

I, Ricardo Perez, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Andrew Ahitow, personally known to me to be the Manager of City Pads II LLC, a Delaware limited liability company, the Manager of 1854 W. 18<sup>th</sup> Investors LLC, a Delaware limited liability company, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he has signed and delivered the said instrument as his free and voluntary act as aforesaid in his capacity as Manager of the limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 19 day of August, 2015.

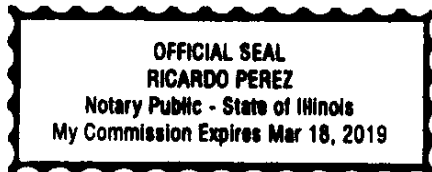


[Signature]  
Notary Public

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

I, Ricardo Perez, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Andrew Ahitow, personally known to me to be the Manager of City Pads II LLC, a Delaware limited liability company, the Manager of 3126 W. Walton Investors LLC, a Delaware limited liability company, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he has signed and delivered the said instrument as his free and voluntary act as aforesaid in his capacity as Manager of the limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 19 day of August, 2015.



[Signature]  
Notary Public

# UNOFFICIAL COPY

## EXHIBIT "A"

### LEGAL DESCRIPTION

LOT 78 IN NEWBERRY ESTATE SUBDIVISION OF BLOCK 35 IN THE SUB OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PIN NO.: 17-19-405-027-0000

COMMON ADDRESS: 1854 W. 18<sup>TH</sup> STREET, CHICAGO, ILLINOIS 60608