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THIS INSTRUMENT PREPARED BY
(and after recording mail to):

MS
David A. Kallick, Esq.
Tishler & Wald, Ltd.
200 S. Wacker Dr., Suite 3000
Chicago, Illinois 60606



Doc#: 0419011102
Eugene "Gene" Moore Fee: \$72.00
Cook County Recorder of Deeds
Date: 07/08/2004 12:03 PM Pg: 1 of 25

Dr
MORTGAGE AND SECURITY AGREEMENT

8225003
THIS MORTGAGE AND SECURITY AGREEMENT, made this 8th day of June, 2004, by and between CARLYLE AT STONEGATE DEVELOPMENT, LLC, an Illinois limited liability company (the "Mortgagor"), and FIRST NORTHWEST BANK (the "Mortgagee").

WITNESSETH:

WHEREAS, Mortgagor is justly indebted to the Mortgagee on that certain construction loan in an amount not to exceed Five Million and No/100 Dollars (\$5,000,000.00) (the "Loan"); and

WHEREAS, the Loan will be evidenced by a Construction Loan Note, and renewals and extensions to be executed by Mortgagor from time to time (the "Note"); and

WHEREAS, all payments due under the Loan are payable at such place as the holder of the Note may from time to time in writing appoint, and in the absence of such appointment, then at the office of the Mortgagee at 234 W. Northwest Highway, Arlington Heights, Illinois 60004; and

WHEREAS, Mortgagor and Mortgagee entered into that certain Construction Loan Agreement of even date herewith (the "Loan Agreement") which sets forth the terms and provisions and agreements of the parties hereto and thereto with respect to the Loan, and the Loan Agreement by this reference is hereby fully incorporated herein and made a part hereof as if fully set forth herein.

NOW, THEREFORE, the Mortgagor, to secure the payment of the principal indebtedness of the Loan and said interest thereon, which shall not exceed in the aggregate \$7,500,000.00, in accordance with the terms, provisions and limitations of this Mortgage, of the Note secured hereby, and the performance of the covenants and agreements herein contained by the Mortgagor to be performed and the additional obligations hereinafter described, and also in consideration of the sum of One Dollar (\$1.00) in hand paid, the receipt whereof is hereby

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acknowledged, does by these presents MORTGAGE, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto the Mortgagee, its successors and assigns, the real estate and all of its estate, right, title and interest therein situate, lying and being in the County of Cook, and State of Illinois, legally described in Exhibit "A", attached hereto and by this reference made a part hereof (which, with the property hereinafter described, is collectively referred to herein as the "Premises");

TOGETHER with all easements and rights of way appurtenant thereto, and all heretofore or hereafter vacated alleys and streets abutting said real estate;

TOGETHER with all buildings and other improvements now located thereon or which may hereafter be placed thereon, tenements, easements, fixtures and appurtenances thereto belonging, and all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), and all fixtures, apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration, and ventilation, including (without restricting the foregoing): all goods, machinery, tools, fire sprinklers and alarm systems, all indoor and outdoor furniture or furnishings, floor coverings, wall coverings, draperies, screens, storm doors, storm windows, shades, blinds, awnings, cabinets, partitions, conduits, ducts and compressors, lighting fixtures and all fixtures, apparatus, equipment and articles which relate to the use, occupancy and enjoyment of the Premises, and are owned by Mortgagor, together with all renewals, additions and accessories to and replacements of and substitutions for each and all of the foregoing, it being understood that the enumeration of any specific articles of property shall in no wise exclude or be held to exclude any items of property not specifically mentioned;

TOGETHER with all the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Mortgagor now has or may hereinafter acquire in the Premises, and any and all awards made for the taking of eminent domain, or by any proceedings or purchase in lieu thereof, or of the whole or any part of the Premises, including without limitation any awards resulting from the change of grade of streets and awards for severance damages; and

TOGETHER with all royalties, minerals, oil and gas rights and profits, water and water rights (whether or not appurtenant) owned by Mortgagor and shares of stock pertaining to such water or water rights, ownership of which affects such real estate.

All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the real estate and to be appropriated to the use of the real estate, and shall for the purposes of this Mortgage be deemed to be real estate and conveyed and mortgaged hereby.

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Mortgagor covenants that it is lawfully seized of the Premises, that the same are unencumbered except as heretofore approved by Mortgagee in writing, and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will forever defend said Premises and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

TO HAVE AND TO HOLD the Premises mortgaged and conveyed unto the said Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth.

The Mortgagor hereby further covenants and agrees to and with the Mortgagee, as follows:

1. PROTECTION AND MAINTENANCE OF THE PREMISES.

(a) **Maintenance, Repair and Restoration of Improvements, Payment of Indebtedness, Payment of Prior Liens.** Mortgagor shall: (i) promptly repair, restore or rebuild any building or improvements now or hereafter on the Premises which may become damaged or be destroyed to substantially the same character as prior to such damage or destruction; (ii) keep said Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof or insured over; (iii) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises superior or inferior to the lien hereof (no such superior, inferior or parity lien to be permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of such lien to Mortgagee; (iv) complete within a reasonable time any improvements now or at any time in process of erection upon said Premises; (v) comply with all requirements of applicable law, municipal ordinances, and restrictions of record with respect to the Premises and the use thereof; (vi) make no alterations in said Premises; (vii) suffer or permit no change in the intended nature of the occupancy of the Premises, without Mortgagee's prior written consent; (viii) initiate or acquiesce in no zoning reclassification without Mortgagee's prior written consent; (ix) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof and of the Note and the Loan Agreement; and (x) duly perform and observe all of the covenants, terms, provisions and agreements herein, in the Note or in the Loan Agreement on the part of Mortgagor to be performed and observed. As used in this Paragraph 1 and elsewhere in this Mortgage, the term "indebtedness" shall mean and include the principal sums evidenced by the Note, together with all interest and additional interest thereon and all other amounts payable to Mortgagee by Mortgagor, and all other sums at any time secured by this Mortgage.

(b) **Contested Liens.** Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal or administrative proceedings diligently prosecuted any mechanics', materialmen's or other liens or claims for lien upon the Premises (all hereinafter referred to as "Contested Liens") and no Contested Liens shall constitute an event of Default (as hereinafter defined) hereunder, if Mortgagor had notified Mortgagee of the intention to contest such liens and Mortgagor has deposited with Mortgagee either the full amount (herein called the "Lien Amount") of

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any such Contested Lien together with such amount as Mortgagee may reasonably estimate as interest or penalties that might become due thereon, or a title insurance endorsement, or other security reasonably acceptable to Mortgagee and sufficient, in Mortgagee's judgment, to assure payment in full of the Lien Amount and any interest or penalties thereon, unless such amount is included in any contingency reserve established under the Loan Agreement. Mortgagee shall not be required to hold the posted funds in an interest bearing or segregated account.

2. PAYMENT OF TAXES, TAX CONTENTS OR TAX DEPOSITS.

(a) **Mortgagor's Obligation to Pay Taxes When Due:** Mortgagor shall pay when due and before any penalty or interest attaches all general real estate taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and all other like charges against the Premises of any nature whatsoever when due and prior to delinquency (all hereinafter referred to as "Taxes"), and shall, upon written request, furnish to Mortgagee duplicate receipts therefor.

(b) **Right to Contest Taxes.** Mortgagor may contest the validity or amount of any such Taxes by appropriate legal or administrative proceedings diligently prosecuted, provided that Mortgagor has notified Mortgagee of the intention of Mortgagor to contest the same before any such Taxes has been increased by any interest, penalties, or costs; and Mortgagor has deposited or caused to be deposited with Mortgagee, at such place as Mortgagee may from time to time in writing designate, a sum of money, a title insurance endorsement or other security reasonably acceptable to Mortgagee and sufficient, in Mortgagee's judgment, to assure payment in full of such contested tax and all penalties and interest that might become due hereon, unless such amount has been included in any contingency reserve established under the Loan Agreement.

(c) **Tax Deposits.** If Mortgagor shall default in its obligation and undertaking to pay the Taxes as set forth above, and the same shall not have been cured within ten (10) days after notice and demand from Mortgagee to do so, then in addition to any other remedies of Mortgagee set forth in this Mortgage in case of a Default (defined below) by Mortgagor, the Mortgagee shall have the right to demand and require that Mortgagor deposit with Mortgagee on the first day of each month thereafter until the indebtedness secured by this Mortgage is fully paid, at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee, a sum equal to one-twelfth (1/12) of the last total annual Taxes for the last ascertainable year on the Premises (unless said taxes are based upon assessments which exclude the improvements or any part thereof now constructed, or to be constructed, in which event the amount of such deposits shall be based upon Mortgagee's reasonable estimate as to the amount of Taxes to be levied and assessed). Any deposits for Taxes posted with Mortgagee may be held in a non-segregated account and without any allowance of interest. In the event of any Default (defined below), any part or all of such reserve fund may be applied to any part of the loan indebtedness secured by this Mortgage and in refunding any part of such reserve fund, Mortgagee may deal with whomever is represented to be the owner of the Premises at that time. If, one month prior

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to the due date of any of the aforementioned Taxes, the amounts then on deposit therefor shall be insufficient for the payment of such Taxes in full, Mortgagor, within ten (10) days after written notice from Mortgagee shall deposit the amount of the deficiency with or as directed by Mortgagee.

3. INSURANCE.

(a) Mortgagor to Maintain Insurance. Mortgagor shall keep all improvements (including all articles of personal property) now or hereafter situated on said Premises insured against loss or damage by fire and other insurable hazards for not less than the full replacement cost thereof and as otherwise may reasonably be required by Mortgagee, including without limitation of the generality of the foregoing: (a) all-risk fire and extended coverage insurance, with vandalism and malicious mischief endorsements, for the full replacement value of the Premises, with agreed upon amount and inflation guard endorsements; (b) flood insurance whenever in the opinion of the Mortgagee such protection is necessary and is available; (c) Builder's Risk Insurance; (d) rent loss insurance for such period or amount as required by Mortgagee in its reasonable discretion; and (e) such other insurance as Mortgagee may from time to time reasonably require. Mortgagor shall also provide liability insurance with such limits for personal injury and death and property damage as Mortgagee may require in its reasonable discretion. All policies of insurance to be furnished hereunder shall comply with the terms and provisions of the Loan Agreement and shall be in forms, companies and amounts satisfactory to Mortgagee, with standard mortgagee clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without not less than thirty (30) days' prior written notice to the Mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration.

(b) No Separate Insurance. Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under standard mortgage clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the policy or policies of such insurance.

(c) Annual Reports of Insurable Value. Within thirty (30) days following the end of each calendar quarter, upon request by Mortgagee, Mortgagor agrees to furnish Mortgagee evidence of insurable value, without cost to the Mortgagee, in such form or forms as are then being regularly and ordinarily made by or required by insurance companies to determine the then replacement value of the improvements on the Premises.

(d) Monthly Insurance Premium Deposits. If Mortgagor shall default in its obligation and undertaking to pay the insurance premiums as set forth above, and the same shall not have been cured within ten (10) days after notice and demand from

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Mortgagee to do so, then in addition to any other remedies of Mortgagee set forth in this Mortgage in case of a Default (defined below) by Mortgagor, the Mortgagee shall have the right to demand and require that Mortgagor deposit with Mortgagee on the first day of each month thereafter until the indebtedness secured by this Mortgage is fully paid, at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee, a sum equal to one-twelfth of the last total annual insurance premium for the last ascertainable year on the Premises. Any deposits for insurance premiums posted with Mortgagee may be held in non-segregated accounts and without any allowance of interest. In the event of any Default (defined below), any part or all of such reserve fund may be applied to any part of the loan indebtedness secured by this Mortgage and in refunding any part of such reserve fund, Mortgagee may deal with whomever is represented to be the owner of the Premises at that time. If, one month prior to the due date of any of the aforementioned premiums for insurance, the amounts then on deposit therefor shall be insufficient for the payment of such insurance premiums in full, Mortgagor, within ten (10) days after written notice from Mortgagee shall deposit the amount of the deficiency with or as directed by Mortgagee.

4. **ADJUSTMENT OF LOSSES WITH INSURER AND APPLICATION OF PROCEEDS OF INSURANCE.** In case of loss or damage by fire or other casualty, Mortgagee is authorized: (a) to settle and adjust any claim under insurance policies which insure against such risks; or (b) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, Mortgagee is authorized to collect and receipt for any such insurance money. Insurance proceeds may, at the option of the Mortgagee, either be applied in reduction of the indebtedness secured hereby without prepayment premium, unless the insurance proceeds are sufficient to restore the Premises to the same condition as prior to the damage, in which case the proceeds shall be held by the Mortgagee in non-segregated accounts and used to reimburse Mortgagor for the cost of the rebuilding or restoration of any or all improvements on said Premises. The improvements shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. In any case, where the insurance proceeds are made available for rebuilding and restoration, such proceeds shall be disbursed upon the disbursing party being furnished with satisfactory evidence of the estimated cost of completion thereof and with architects' certificates, waivers of lien, contractors' and subcontractors' sworn statements, title continuations and other evidence of cost and payments so that the disbursing party can verify that the amounts disbursed from time to time are represented by completed and in place work and that said work is free and clear of mechanics' lien claims. No payment made prior to the final completion of the work shall exceed ninety (90%) percent of the value of the work performed from time to time, and at all times the undisbursed balance of such proceeds remaining in the hands of the disbursing party shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. The Mortgagee shall approve plans and specifications of such work before such work shall be commenced. Any surplus which may remain out of said insurance proceeds after payment of such cost of building or restoration shall, at the option of the Mortgagee, be applied on account of the indebtedness secured hereby or be paid to any party entitled thereto. No interest shall be allowed to Mortgagor on any proceeds of insurance held by the Mortgagee.

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5. **STAMP TAX.** If, by the laws of the United States of America, or of any state having jurisdiction over the Mortgagee, any tax is due or becomes due in respect of the issuance of the Note (other than income taxes or other like taxes customarily payable by Mortgagee) hereby secured, the Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor further covenants to reimburse the Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note secured hereby or the recording of this Mortgage.

6. **LEASES AND ASSIGNMENT OF RENTS.**

(a) **Leases.** Mortgagor shall not, without Mortgagee's prior written consent: (i) enter into any lease for all or any portion of the Premises, (b) execute an assignment or pledge of any rents and/or leases affecting all or any portion of the Premises, or (c) accept any prepayment of any installment of any rents more than thirty (30) days before the due date of such installment, other than as security and other deposits.

(b) **Assignment of Rents.** In the event Mortgagee consents in writing to any lease for any portion of the Premises, then Mortgagor hereby agrees to execute and deliver to Mortgagee any and all documents, instruments and writings and provide such other additional collateral for security as Mortgagee shall request, including, but not limited to, executing and delivering to the Mortgagee an Assignment of Rents and Leases (herein called the "Assignment of Rents") wherein the Mortgagor shall assign to Mortgagee all of the rents, issues and profits and/or any and all leases and/or the rights of management of the Premises, all as therein more specifically set forth, which Assignment of Rents shall be by this reference incorporated herein by reference as fully and with the same effect as if set forth herein at length. The Mortgagor agrees that it will duly perform and observe all of the terms and provisions on lessor's part to be performed and observed under any Assignment of Rents. The Mortgagor further agrees that it will duly perform and observe all of the terms and provisions on lessor's part to be performed and observed under any and all leases of the Premises to the end that no default on the part of lessor shall exist thereunder. Nothing herein contained shall be deemed to obligate the Mortgagee to perform or discharge any obligation, duty or liability of lessor under any lease of the Premises, and the Mortgagor shall and does hereby indemnify and hold the Mortgagee and Mortgagee's directors, officers, employees and agents harmless from any and all liability, loss or damage which the Mortgagee may or might incur under any lease of the Premises or by reason of the Assignment of Rents, except for acts of gross negligence or willful misconduct by Mortgagee, its employees and agents, and any and all such liability loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonably attorneys' fees, incurred by the Mortgagee in the defense of any claims or demands therefor (whether successful or not) shall be so much additional indebtedness secured hereby and the Mortgagor shall reimburse the Mortgagee therefor on demand.

(c) **Attornment by Lessees.** In the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee under each lease of the Premises shall, at the option of the Mortgagee, attorn to any person succeeding to the

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interest of Mortgagor as a result of such enforcement and shall recognize such successor in interest as lessor under such lease without change in the terms or other provisions thereof, provided, however, that said successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment or modification to any lease made without the consent of Mortgagee or said successor in interest. Each lessee, upon request by said successor in interest, shall execute and deliver an instrument or instruments confirming such attornment.

7. **EFFECT OF EXTENSIONS OF TIME.** If the payment of said indebtedness or any part thereof be extended or varied or if any part of any security for the payment of the indebtedness be released, all persons now or at any time hereafter liable therefor, or interested in said Premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding such extension, variation or release.

8. **MORTGAGEE'S PERFORMANCE OF DEFAULTED ACTS.** In case of Default (defined below), Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and any payment or any act may be made or accomplished either before or after acceleration of the indebtedness secured hereby or foreclosure of the lien hereof and during the period of redemption, if any. The Mortgagee may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other lien or title encumbrance or claim thereof, or redeem from any tax sale or forfeiture affecting said Premises or contest any tax or assessment or cure any default of lessor in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees and costs, and any other monies advanced by Mortgagee in regard to any tax if not paid and/or to protect the Premises or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate specified in the Note (hereinafter called the "Default Rate"). Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

9. **MORTGAGEE'S RELIANCE.** Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity of amount of any claim for lien which may be asserted.

10. **ACCELERATION OF INDEBTEDNESS IN CASE OF DEFAULT.** Mortgagor further covenants and agrees with Mortgagee, that if: (a) default be made in the due and punctual payment of the Note secured hereby, or any payment due in accordance with the terms thereof or in accordance with the terms of the Loan Agreement (or any document referred

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to therein) and such default is not cured within ten (10) days after such payment shall be due; or (b) Mortgagor or any guarantor of the Note secured hereby shall file a petition in voluntary bankruptcy or under any Chapter of Title Eleven of the United States Code or any similar law, state or federal, whether now or hereafter existing, or any answer admitting insolvency or inability to pay its debts, or fail to obtain a vacation or stay of involuntary proceedings within sixty (60) days, as hereinafter provided; or (c) Mortgagor or any guarantor of the Note secured hereby, shall be adjudicated a bankrupt, or a trustee or a receiver shall be appointed for the property of Mortgagor, or any guarantor of the Note secured hereby, or the major part thereof in any involuntary proceeding or any court shall have taken jurisdiction of the property of Mortgagor, or any guarantor of the Note secured hereby, in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of Mortgagor, or any guarantor of the Note secured hereby, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within sixty (60) days; or (d) Mortgagor or any guarantor of the Note secured hereby, shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof; or (e) default shall be made in the due observance or performance of any other of the covenants, agreements or conditions hereinbefore or hereinafter contained, including, but not limited to, those set forth in the Note or the Loan Agreement, required to be kept or performed or observed by the Mortgagor, excluding the provisions of the Restrictions on Transfer described in Paragraph 30 below, which shall not be cured within thirty (30) days after notice thereof is sent by Mortgagee to Mortgagor, or in the event said default is impossible to cure within said 30-day period, failure of Mortgagor to commence to cure the same, diligently pursue to completion, and to give written notice thereof to Mortgagee; provided however, in any event cure must be completed within sixty (60) days of Mortgagee's written notice; or (f) the occurrence of a Prohibited Transfer (as defined in Paragraph 30 below); or (g) default which shall not have been cured within the applicable grace period, if any, shall be made in the due observance or performance of any of the covenants, agreements or conditions contained, required to be kept or observed by Mortgagor in any other instrument given to secure the payment of the Note secured hereby, the Loan Agreement and all Loan Documents (as that term is defined in the Loan Agreement) (all such documents hereinafter referred to collectively as the "Loan Documents" and referred to individually as a "Loan Document"), then and in every such case the whole of the indebtedness hereby secured shall at once, at the option of the Mortgagee, become immediately due and payable without notice to Mortgagor. For purposes of this Mortgage, each of the events described in (a) through (g) in the preceding sentence shall be referred to as a "Default". Notwithstanding anything to the contrary contained in the preceding sentences, the death, incompetency, or other legal disability of any guarantor, if any, of the Note secured hereby shall not constitute a Default hereunder (x) if such event occurs after Lender terminates the subject guaranty, or (y) if such event occurs while the subject guaranty is in effect, and the following conditions are fulfilled to Mortgagee's satisfaction: (i) Mortgagor causes and obtains for the benefit of Mortgagee a substitute guarantor, acceptable to Mortgagee's sole and absolute discretion, and such substitute guarantor executes and delivers an assumption agreement and any other instruments reasonably required by Mortgagee to replace such deceased, incompetent, or legally disabled guarantor, and (ii) there shall be continuity of management, direction and control of Mortgagor and the Premises notwithstanding the occurrence of such event. If while any insurance proceeds or condemnation awards are being held by Mortgagee to reimburse

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Mortgagor for the cost of rebuilding or restoration of any or all improvements on the Premises, as set forth in this Mortgage, the Mortgagee shall be or become entitled to, and shall accelerate the indebtedness secured hereby, then and in such event, the Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by it in reduction of the indebtedness hereby secured any excess held by it over the amount of indebtedness then due hereunder shall be returned to Mortgagor or any subsequent party holding record title to the Premises or otherwise entitled thereto without interest.

11. FORECLOSURE; EXPENSE OF LITIGATION

(a) **Right To Foreclosure.** In case of Default, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or in any Loan Document. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens' Certificates and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All reasonable expenditures and reasonable expenses of the nature in this paragraph mentioned and such reasonable expenses and fees as may be incurred in the protection of said Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or said Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall immediately become due and payable by Mortgagor, with interest thereon at a rate equal to the Default Rate as defined in the Note secured by this Mortgage at the time of such expenditure by the Mortgagee.

(b) **Failure to Join a Tenant.** Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of any tenant or tenants of the Premises. The failure to join any such tenant or tenants as party defendant or defendants in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose their rights shall not be asserted by the Mortgagor as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

(c) **Mortgagee May Bid.** Upon any foreclosure sale, the Mortgagee may bid for and purchase the Premises and shall be entitled to apply all or part of the indebtedness secured hereby as a credit to the purchase price.

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(d) **Compliance with Illinois Mortgage Foreclosure Law.**

(i) In the event that any provision of this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (Chapter 735, Act 5, Section 15-1101 et seq. of the Illinois Compiled Statutes (735 ILCS 5/15-1101 et seq.)) (herein called the "Act") the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(ii) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon Default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

(iii) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Section 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

12. **APPLICATION OF PROCEEDS OF FORECLOSURE SALE.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; second, all other items which may under the terms hereof or any Loan Document constitute secured indebtedness additional to that evidenced by the Note or any Loan Document, with interest thereon as herein and therein provided and all principal and interest remaining unpaid on the Note or any Loan Document; third, any overplus to any party entitled thereto as their rights may appear.

13. **POSSESSION DURING FORECLOSURE.**

(a) **Appointment of Receiver.** Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of said Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be thereon occupied as a homestead or not and the Mortgagee hereunder or any holder of the Note may be appointed such receiver. Such receiver shall have power to collect the rents, issues and profits of said Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be

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entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (i) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure; or (ii) the deficiency in case of a sale and deficiency.

(b) **Mortgagee's Right of Possession in Case of Default.** In any case in which under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole principal sums secured hereby is declared to be immediately due, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the Premises or any part thereof personally, or by its agent or attorneys. In such event Mortgagee in its discretion may, with or without process of law, enter upon and take and maintain possession of all or any part of said Premises, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the Premises relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may as attorney-in-fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power and to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power:

(i) to cancel or terminate any lease or sublease for any cause or on any ground which would entitled Mortgagor to cancel the same;

(ii) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;

(iii) to extend or modify any then existing leases and to make new leases, 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 indebtedness hereunder and beyond the date of 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 Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser;

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(iv) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises as to it may seem judicious;

(v) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and

(vi) to receive all of such avails, rents, issues and profits; and with full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or inability under any leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee and each of Mortgagee's shareholders, directors, officers, employees, agents and personal and legal representatives harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof, and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases. Should Mortgagee incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand and with interest at the Default Rate.

(c) **Application of Income Received by Mortgagee.** Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it by Paragraph 13(b) hereof, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Mortgagee may determine:

(i) to the payment of the operating expenses of said Premises, including cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(ii) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and, if this is a leasehold mortgage, of all rents due or which may become hereafter due under the underlying lease;

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(iii) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Premises, including the cost from time to time of installing or replacing personal property such as appliances therein, and of placing the Premises in such condition as will, in the judgment of Mortgagee, make it readily saleable and/or rentable; and

(iv) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

14. **RIGHTS AND REMEDIES CUMULATIVE; NO WAIVER.** Each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing hereunder, under the Note, the Mortgage, the Loan Agreement or any Loan Document, or, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or under any Loan Document or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

15. **MORTGAGEE'S RIGHT OF INSPECTION.** Mortgagee and its representatives and agents shall have the right to inspect the Premises and, upon reasonable notice, to inspect all books, records, and documents pertaining thereto at all reasonable times and access thereto shall be permitted for that purpose. Mortgagee shall indemnify Mortgagor for any reasonable actual, out-of-pocket, costs for damage to person or property directly resulting from Mortgagee's gross negligence or willful misconduct in such inspections.

16. **CONDEMNATION.** Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any award or any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. The Mortgagee may elect to apply the proceeds of the award upon or in reduction of the indebtedness secured hereby without prepayment premium, whether due or not, or to hold such proceeds in account which may be non-segregated and to make said proceeds available for restoration or rebuilding of the Premises in accordance with plans and specifications furnished by Mortgagor and to be submitted to and approved by the Mortgagee. In the event said proceeds are made available for rebuilding or restoration, by the election of the Mortgagee as aforesaid, the proceeds of the award shall be paid out in the same manner as is provided in Paragraph 4 hereof for the payment of insurance proceeds toward the cost of rebuilding or restoration. Any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall, at the option of the Mortgagee, be applied on account of the indebtedness secured hereby or be paid to any party entitled thereto. No interest shall be allowed to Mortgagor on account of any proceeds of any award held by the Mortgagee. Mortgagor agrees to execute such further assignments of any compensation, awards, claims, and damages as the Mortgagee may reasonably require from time to time. Mortgagee shall not be responsible for any failure to collect any amount in connection with any such proceeding regardless of the cause of such failure.

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17. RELEASE UPON PAYMENT AND DISCHARGE OF MORTGAGOR'S OBLIGATION. Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby. Mortgagee may require from Mortgagor reimbursement of any reasonable attorneys' fees and other out of pocket expenses incurred for preparation and delivery of any release.

18. GIVING OF NOTICE. Any notice which shall be required to be given hereunder shall be in writing, and the mailing thereof in the United States mail by certified or registered mail and postage prepaid to the parties as follows:

If to Mortgagor: Gus M. Pablecas, President
Pabcor Equity Corporation
664 N. Milwaukee Avenue, Suite 200
Prospect Heights, IL 60070

With copy to: Louis Harrison, Esq.
Harrison & Held, LLP
333 W. Wacker Drive
Suite 950
Chicago, IL 60606

If to Mortgagee: First Northwest Bank
234 W. Northwest Highway
Arlington Heights, Illinois 60004
Attn: Earl Goldman
Senior Vice President

With copy to: David A. Kallick, Esq.
Tishler & Wald, Ltd.
200 S. Wacker Dr., Suite 3000
Chicago, Illinois 60606

or at such other place as the parties may by notice in writing designate as a place for service of notice, shall constitute service of notice hereunder. Any notice mailed shall be deemed to have been given two (2) business days after the date of mailing. Notice may also be given by hand delivery and, in such case, shall be deemed to have been given as of the date of receipt.

19. WAIVER OF DEFENSE. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note hereby secured.

20. WAIVERS.

(a) **Waiver of Statutory Rights.** To the extent permitted by law, Mortgagor hereby agrees that if a Default occurs hereunder, neither Mortgagor nor anyone claiming

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through or under Mortgagor shall or will apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all rights to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. To the extent permitted by law, Mortgagor does hereby expressly waive any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, or under any sale pursuant to any statute, order, decree or judgment of any court, on its own and on behalf of each and every person (except decree or judgment creditors of the Mortgagor) acquiring any interest in or title to the Premises subsequent to the date of this Mortgage.

(b) **Waiver of Claims.** To the extent permitted by law, Mortgagor further waives any and all right to claim or recover against Mortgagee, its shareholders, directors, officers, employees, agents and legal and personal representatives for loss or damage to Mortgagor, the Premises, Mortgagor's other property, or the property of others under Mortgagor's control from any cause except for the gross negligence and willful or malicious acts of Mortgagee, its employees, agents and representatives and except for Mortgagee's material breach of a material obligation of Mortgagee under the Loan Agreement following receipt by Mortgagee of written notice of such breach provided such breach is not cured within thirty (30) days after receipt of such notice. All sums payable by Mortgagor hereunder shall be paid without notice, demand, counterclaim, set off, deduction, or defense, and without abatement, suspension, deferment, diminution, or reduction, and the obligations and liabilities of Mortgagor hereunder shall in no way be released, discharged, or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Premises or any part thereof; (ii) any restriction or prevention of or interference with any use of the Premises or any part thereof; (iii) any title defect or encumbrance or any eviction from the Premises or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to the Mortgagee, or any action taken with respect to this Mortgage by any trustee or receiver of the Mortgagee, or by any court, in any such proceeding; (v) any claim which Mortgagor has or might have against the Mortgagee; (vi) any default or failure on the part of the Mortgagee to perform or comply with any of the terms hereof of any other agreement with Mortgagor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; or whether or not Mortgagor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of any obligations secured hereby.

21. **FILING AND RECORDING FEES.** Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (other than

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Mortgagee's income on other like taxes accruing by reason of the interest payable on the Loan), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage, and all of Mortgagee's reasonable expenses, charges, costs and fees relating to the Loan as provided in the Note, the Mortgage, the Loan Agreement or any Loan Document as provided in such documents.

22. BUSINESS PURPOSE. Mortgagor represents that the proceeds of the Loan secured by this Mortgage will be used for the purposes specified in Chapter 815, Act 205, Sections 4(1)(c) and (l) of the Illinois Compiled Statutes (815 ILCS 205/4(1)(c) and (l)), and that the principal obligation secured hereby constitutes a business loan which comes within the purview of said Sections.

23. FURNISHING OF FINANCIAL STATEMENTS. Mortgagor covenants and agrees that it will keep and maintain books and records of account in which full, true and correct entries shall be made of all dealings and transactions relative to the Premises, which books and records of account shall, at reasonable times and on reasonable notice, be open to the inspection of the Mortgagee and its accountants and other duly authorized representatives. Such books of record and account shall be kept and maintained in accordance with generally accepted accounting principles consistently applied as customarily adapted to real estate practices.

24. CONSTRUCTION LOAN.

(a) **Construction Mortgage.** This Mortgage secures an obligation incurred for the construction of improvements on the land mortgaged herein and constitutes a "construction mortgage" within the meaning of 810 ILCS 5/9-313(c) of the Illinois Compiled Statutes.

(b) **Construction Loan Agreement.** The proceeds of the Loan secured hereby are to be disbursed by Mortgagee in accordance with the provisions contained in the Loan Agreement. In the event of conflict of this Mortgage and the Loan Agreement, the Loan Agreement shall govern. All advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Note secured hereby, shall be secured hereby to the same extent as though said Loan Agreement were fully incorporated in this Mortgage and the occurrence of any Event of Default under said Loan Agreement shall constitute a Default under this Mortgage entitling the Mortgagee to exercise all of the rights and remedies conferred upon the Mortgagee by the terms of this Mortgage or by law, as in the case of any other default.

25. LATE CHARGE. The Note secured hereby requires the payment of a late charge in the event any installment of principal or interest due thereunder shall become overdue for a period in excess of ten (10) days. The Note requires the payment to the Mortgagee of a late charge of five percent (5%) for each dollar so overdue to defray part of the cost of collection. Said late charge shall be secured hereby as indebtedness as that term is defined in Paragraph 1 hereof.

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26. **OTHER PREMISES OR IMPROVEMENTS.** Mortgagor shall not by act or omission permit any building or other improvement on any Premises not subject to the lien of this Mortgage to rely on the Premises or any part hereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission impair the integrity of the Premises as a zoning parcel separate and apart from any premises not subject to the lien of this Mortgage. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this paragraph shall be void.

27. **NO MERGER.** It being the desire and intention of the parties hereto that the Mortgage and the lien thereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should Mortgagee acquire any additional or other interests in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in any appropriate document duly recorded, this Mortgage and the lien thereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

28. **SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT.**

(a) **Security Agreement.** Mortgagor and Mortgagee agree: (i) that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "Code") of the state in which the Premises are located with respect to all sums, now or hereinafter on deposit with the Mortgagee for taxes and insurance premiums, if any, ("Deposits") and with respect to any property included in the definition herein of the word "Premises", which property may not be deemed to form a part of the real estate described in **Exhibit "A"** or may not constitute a "fixture" (within the meaning of Section 9-102 of the Code), and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as the "Collateral"); and (ii) that a security interest in and to the Collateral and the Deposits is hereby granted to the Mortgagee; and (iii) that the Deposits and all of the Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee; all to secure payment of the indebtedness and to secure performance by the Mortgagor of the terms, covenants and provisions hereof and of the Loan Agreement.

(b) **Applicability of Commercial Code in Case of Default.** If a Default occurs under this Mortgage, Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and Collateral in accordance with its rights, powers and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. The parties agree that if the Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, Mortgagee shall have all remedies available to a secured party under the Code and ten (10) days notice of the sale of the Collateral shall be reasonable notice. The

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reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee. Mortgagor agrees that, without the written consent of Mortgagee, Mortgagor will not remove or permit to be removed from the Premises any of the Collateral except that so long as the Mortgagor is not in default hereunder, Mortgagee shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, but only upon replacing the same or substituting of or the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. Mortgagor covenants and represents that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto, unless the Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of others.

(c) **Fixture Filing Financing Statement.** This Mortgage is intended to be a financing statement within the purview of Section 9-502 of the Code with respect to those items of equipment, goods or inventory which are fixtures on the Premises. The addresses of the Mortgagor (Debtor) and Mortgagee (Secured Party) are hereinafter set forth:

Address of Mortgagee: First Northwest Bank
234 W. Northwest Highway
Arlington Heights, Illinois 60004
Attn: Earl Goldman
Senior Vice President

Address of Mortgagor: Gus M. Pablecas
Pabcor Equity Corporation
664 N. Milwaukee Avenue, Suite 200
Prospect Heights, IL 60070

This Mortgage is to be filed for record with the Recorder of Deeds of the County where the Premises are located. Mortgagor is the record owner of the Premises.

(d) **Separate Security Agreements and Financing Statements.** Mortgagor, upon request by Mortgagee from time to time, shall execute, acknowledge and deliver to Mortgagee, a separate Security Agreement, Financing Statement or other similar security instruments, in form satisfactory to Mortgagee, covering all property of any kind whatsoever owned by Mortgagor, which is used in the operation of the Premises and which constitutes goods within the meaning of the Code or concerning which there may be any doubt whether the title to same has been conveyed by or security interest perfected

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by this Mortgage under the laws of the state in which the Premises are located, and will further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered any financing statement, affidavit, continuation statement or certificate or other document as Mortgagee may request in order to perfect, preserve, maintain, continue and extend the security interest under and the priority of this Mortgage and such security instrument. Mortgagor further agrees to pay to Mortgagee on demand all costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing and re-filing of any such document. Mortgagor shall from time to time, on request of Mortgagee, deliver to Mortgagee an inventory of the Collateral in reasonable detail.

29. **TRUTH-IN-LENDING.** Mortgagor represents and agrees that the obligations secured hereby are an exempt transaction under the Truth-In-Lending Act, 15 U.S.C. § 1601 et seq.

30. **RESTRICTIONS ON TRANSFER.**

(a) **Prohibited Transfers.** It shall be an immediate event of Default hereunder if, without the prior written consent of the Mortgagee any of the following shall occur (hereinafter called a "Prohibited Transfer"):

(i) If Mortgagor shall create, effect or consent to or shall suffer or permit, any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof, or interest therein provided, however, Mortgagor may transfer an interest in Mortgagor, so long as the Manager of Mortgagor and the Manager's membership interest in Mortgagor remains unchanged; or

(ii) Any sale, conveyance, assignment or other transfer of or the grant of a security interest in any equity interest in, of or to the Mortgagor.

In such case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided, that the foregoing provisions of this Paragraph 30 shall not apply (A) to the lien of this Mortgage or any other liens securing the Note secured hereby; and (B) to the lien of current taxes or to mechanics' liens or delinquent taxes which are being contested and are insured over.

(b) **Reasonableness of Restrictions.** Mortgagor acknowledges and agrees, for itself and its successors, that the foregoing restrictions on sale, transfer, or conveyance are reasonable. Any violation of the terms of this paragraph shall entitle Mortgagee to declare the whole outstanding principal balance of the Note, together with interest accrued thereon and any other sums owing under the terms of this Mortgage or any other instrument related to the indebtedness hereby secured, immediately due and payable and to foreclose the lien and security interest granted in this Mortgage.

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(c) **Binding Upon Successors.** The provisions of this Paragraph 30 shall be operative with respect to, and shall be binding upon and enforceable against Mortgagor and its successors and permitted assigns and any subsequent owner or owners of the Premises who, in accordance with the terms hereof or otherwise, shall acquire any part or interest in or encumbrance upon the Premises.

31. **MAXIMUM ALLOWABLE RATE OF INTEREST.** All agreements herein and in the Note are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance of the Note, or otherwise, shall the amount paid or agreed to be paid to the Mortgagee for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other agreement referred to herein, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance the Mortgagee shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due under the Note and not to the payment of interest.

32. **MORTGAGEE'S LIEN FOR SERVICE CHARGE AND EXPENSES.** At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all loan and/or financing fees or service charges, liquidated damages, loan expenses including but not limited to reasonable attorneys' fees of Mortgagee's counsel to prepare Loan Documents, appraisal fees, and advances due to or incurred by Mortgagee in connection with the loans to be secured hereby.

33. **MISCELLANEOUS.** The following understandings shall be applicable to this Mortgage:

(a) **Use of Proceeds.** Mortgagor warrants that the proceeds evidenced by the Note secured hereby will not be used for the purchase of registered equity securities within the purview of Regulation G issued by the Board of Governors of the Federal Reserve System.

(b) **Mortgagee in Possession.** Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by Mortgagee pursuant to this Mortgage.

(c) **Relationship of Mortgagee and Mortgagor.** Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any beneficiary, lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and without limiting the

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foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise.

(d) **Time of the Essence.** Time is of the essence of the payment by Mortgagor of all amounts due and owing to Mortgagee under the Note or any Loan Document and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage or any Loan Document.

(e) **Subordination of Property Manager's Lien.** Any property management agreement for the Premises, if any, entered into hereafter by Mortgagor with a property manager, shall contain a "no lien" provision whereby the property manager waives and releases any and all mechanics' lien right that the property manager or anyone claiming by, through or under the property manager may have pursuant to the Illinois Mechanic's Lien Act, 7/5 ILCS 60/0.01 et seq. of the Illinois Compiled Statutes. Such property management agreement or a short form thereof shall, at Mortgagee's request, be recorded with the Recorder of Deeds of the county where the Premises are located. In addition, Mortgagor shall cause the property manager to enter into a Subordination of Management Agreement with Mortgagee, in recordable form, whereby the manager subordinates present and future lien rights and those of any party claiming by, through or under the manager, to the lien of this Mortgage.

(f) **Subrogation.** If all or any part of the proceeds of the Loan made by Mortgagee to Mortgagor, or any amount paid out or advanced by Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior or junior lien or encumbrance upon the Premises, or any part thereof, then all such amounts shall constitute part of the indebtedness secured hereby and Mortgagee shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of same.

(g) **Successors.** This Mortgage and all provisions hereof shall extend to and be binding upon Mortgagor and its successors, grantees and assigns, any subsequent owner or owners of the Premises and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the Note and other indebtedness secured hereby or any part thereof, whether or not such persons shall have executed said Note, any Loan Document or this Mortgage. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein, and the holder or holders, from time to time, of the Note secured hereby.

(h) **Invalidity of a Provision.** In the event one or more of the provisions contained in this Mortgage or the Note secured hereby or any Loan Document or in any other security documents given to secure the payment of the Note secured hereby shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this

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Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein or therein.

(i) **Illinois Law.** This Mortgage and the Note it secures are to be construed and governed by the laws of the State of Illinois.

(j) **Estoppel Certificates.** Mortgagor, on written request of the Mortgagee, will promptly furnish a signed statement of the amount of the indebtedness secured hereby, a statement as to whether or not any default then exists hereunder and specifying the nature of such default and such other statements reasonably requested by Mortgagee.

(k) **Grammatical Adjustments.** Whenever the context requires, the singular form of any word herein shall include the plural form, and vice versa, and the neuter form of any word shall include the masculine and feminine forms, and vice versa.

(l) **Further Instruments.** Upon request of Mortgagee, Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary to fully effectuate the intent of this Mortgage and of the other Loan Documents.

(m) **Covenants To Run With Premises.** All of the covenants hereof shall run with the Premises.

IN WITNESS WHEREOF, the Mortgagor has executed and delivered this instrument the day, month and year first above written.

CARLYLE AT STONEGATE DEVELOPMENT, LLC

By: PABCOR EQUITY CORPORATION, an Illinois corporation, its Manager

By: _____

Gus M. Pabecas, President

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ACKNOWLEDGMENT

STATE OF ILLINOIS)
) ss.
 COUNTY OF COOK)

I, Michelle Arvanitis, a Notary Public in and for said County in the State aforesaid, do hereby certify that Gus M. Pablecas, personally known to me to be the President of **PABCOR EQUITY CORPORATION**, the Manager of **CARLYLE AT STONEGATE DEVELOPMENT, LLC**, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and the free and voluntary act of said company for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal this 28 day of June, 2004.



Michelle Arvanitis
 NOTARY PUBLIC

My Commission Expires:

1/14/06

UNOFFICIAL COPY

EXHIBIT "A"

Legal Description

LOTS 333 THRU 345 IN STONEGATE BEING A RESUBDIVISION IN H. ROY BERRY COMPANY'S EAST MORELAND, BEING A SUBDIVISION OF THAT PART OF THE WEST ½ OF THE NORTHWEST ¼ OF SECTION 33 AND THAT PART OF THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 32, BOTH IN TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTHEASTERLY OF THE CHICAGO AND NORTHWESTERN RAILROAD COMPANY, IN COOK COUNTY, ILLINOIS.

P.I.N.s: 03-33-109-005-0000
03-33-109-006-0000
03-33-109-007-0000
03-33-109-008-0000
03-33-109-009-0000
03-33-109-010-0000
03-33-109-011-0000
03-33-109-012-0000
03-33-109-013-0000
03-33-109-014-0000
03-33-109-015-0000
03-33-109-016-0000

Address: 1402-1458 E. Northwest Highway
Arlington Heights, Illinois 60004