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Cook County Recorder 55.50



**MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS AND LEASES**

THIS INDENTURE ("Mortgage") is made June __, 1999, by and between Pacelli Holdings, LLC, an Illinois limited liability company ("Mortgagor"), and Robert F. Smith ("Mortgagee").

WITNESSETH:

WHEREAS, Mortgagee and August C. Ghilarducci ("Ghilarducci, Jr."), Westchester Financial Associates, Inc., an Illinois corporation ("WFI, Illinois"), and Westchester Financial Associates, Inc., a Nevada corporation ("WFI, Nevada") (Ghilarducci, Jr., WFI, Illinois and WFI, Nevada are hereinafter sometimes collectively referred to as "Defendants") and August C. Ghilarducci solely as an accommodation party and without personal liability ("Ghilarducci, Sr.") (all of the parties to this Mortgage are hereinafter sometimes collectively referred to as "Parties") have entered into a Settlement Agreement dated of even date herewith (the "Agreement") under which Defendants agreed to settle certain litigation referenced in such Settlement Agreement for the principal sum of FIVE HUNDRED FIFTY-FIVE THOUSAND Dollars (\$555,000) together with interest on the unpaid balance from and after the date of this Mortgage at the rate of ten percent (10%) per annum using a ten year amortization (\$555,000.00) (the "Settlement Amount"), and

WHEREAS, Mortgagor, in order to secure the payment of the principal sum of money and interest and other sums as required by and as evidenced by the Settlement Agreement, has agreed to grant to Mortgagee a second mortgage on the property owned by Mortgagor as hereinafter described;

**THIS MORTGAGE WAS PREPARED BY
AND AFTER RECORDING RETURN TO:**

Jerome F. Crotty, Esq.
Rieck and Crotty, P.C.
55 W. Monroe Street, Suite 3390
Chicago, Illinois 60603

ADDRESS:

Property Address: 4747 Midlothian Turnpike
Crestwood, Illinois
PIN: 28-03-301-024

NOW, THEREFORE, Mortgagor, to secure the payment of the principal sum of money and interest and other sums as required by and as evidenced by the Settlement Agreement in accordance with the terms, provisions and limitations of this Mortgage, and any other sums advanced by Mortgagee to protect the security of this Mortgage or discharge the obligations of Mortgagor hereunder (such principal and interest and all other sums being herein collectively referred to the "Indebtedness") and the performance of the covenants and agreements herein contained by Mortgagor to be performed, and also in consideration of the sum of One Dollar (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents **MORTGAGE, GRANT, CONVEY and RELEASE** to Mortgagee, his successors and assigns, the following described real estate and all of Mortgagor's estate, right, title and interest therein, situated in Cook County, Illinois, to-wit:

**THE LEGAL DESCRIPTION OF THE REAL ESTATE MORTGAGED HEREBY
IS ATTACHED HERETO AS EXHIBIT A AND MADE A PART HEREOF**

which, with the property hereinafter described, is collectively referred to herein as the "Property." In addition, Mortgagor grants to Mortgagee a Uniform Commercial Code security interest (second position) in the personal properties referenced on **EXHIBIT B ATTACHED HERETO AND MADE A PART HEREOF**.

TOGETHER WITH all improvements, tenements, easements, hereditaments and appurtenances located thereon, and all rents, issues and profits thereof for so long as and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with the Property and not secondarily), the structures or buildings, additions and improvements, and replacements thereof now or hereafter erected upon the Property. Notwithstanding anything herein to the contrary, Mortgagee disclaims any interest in: (a) Mortgagor's inventory and receivables, wherever located; and (b) equipment acquired after the date of this Agreement and located on the Property and subject to a purchase money security interest of a third party except as such equipment replaces equipment pledged hereunder.

TO HAVE AND TO HOLD the Property unto Mortgagee, and his successors and assigns, forever, for the purposes and uses herein set forth.

IT IS FURTHER UNDERSTOOD AND AGREED:

1. Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.: Mortgagor shall: (A) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Property which may become damaged or be destroyed (except as provided in Section 3); (B) keep the Property in good condition and repair without waste, and free from mechanics' liens or claims for lien not expressly subordinated to the lien hereof; (C) pay when due any indebtedness which may be secured by a lien or charge on the Property superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee; (D) comply with all requirements of law, municipal ordinances, or restrictions of record with respect to the Property and the use thereof; (E) make no material alterations in the Property except those that are ordinary and customary in the conduct of Mortgagor's business; and (F) suffer

or permit no change in the general nature of the occupancy of the Property, which would cause a violation of any applicable zoning ordinance.

2. Insurance. Mortgagor shall keep all buildings and improvements now or hereafter situated on the Property insured against loss or damage by fire and extended coverage, in accordance with the terms of the first mortgage provided by Grand National Bank (the "First Mortgage"), or, if inapplicable for malicious mischief and vandalism and such other hazards in such amounts as may reasonably be required by Mortgagee, but in any case for the full insurable value thereof. Mortgagor shall also provide liability insurance with such limits for personal injury and death and property damage as Mortgagee may reasonably require. All policies of insurance to be furnished hereunder shall be in forms, with companies, and in amounts all as may be reasonably required by Mortgagee, with mortgagee loss payable clauses attached to all policies in favor of and in form reasonably satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without ten (10) days' prior written notice to Mortgagee. Mortgagor shall deliver a certificate of insurance or the original of 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. If any renewal policy is not delivered to Mortgagee thirty (30) days before the expiration of any existing policy or policies, with evidence of premium paid, Mortgagee may, but is not obligated to obtain, the required insurance on behalf of Mortgagor (or insurance in favor of Mortgagee alone) and pay the premiums thereon.

3. Adjustment of Losses with Insurer and Application of Proceeds of Insurance. In case of loss, subject to the terms of the First Mortgage, Mortgagee (or after entry of decree of foreclosure, purchaser at the sale, or the decree creditor, as the case may be) is hereby authorized either: (A) to settle and adjust any claim under such insurance policies without consent of Mortgagor; or (B) upon written request by Mortgagor, to allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss. In either case Mortgagee is authorized to collect and receipt for any such insurance money, subject to the terms of the First Mortgage. Provided that: (A) an Event of Default has not occurred under the Agreement such insurance proceeds shall be held by Mortgagee, subject to the terms of the First Mortgage and used to reimburse Mortgagor for the cost of the rebuilding or restoration of the buildings or improvements on the Property. If the conditions set forth above for use of insurance proceeds for restoration or rebuilding are not met, Mortgagee will apply the proceeds to the Indebtedness in the order provided in Section 11 hereof. The buildings and improvements shall be so restored or rebuilt as to be of at least equal value and substantially the same character as prior to such damage or destruction. In the event Mortgagor is entitled to reimbursement out of insurance proceeds, such proceeds shall be made available, from time to time, promptly upon Mortgagee being furnished with satisfactory evidence of the estimated cost of completion thereof and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments, including, at the option of Mortgagee, insurance against mechanic's liens and/or a performance bond or bonds in form satisfactory to Mortgagee, with premium fully prepaid, under the terms of which Mortgagee shall be the sole or a dual obligor, and which shall be written with such surety company or companies as may be satisfactory to Mortgagee, as Mortgagee may reasonably require and approve, and, if the estimated cost of the work exceeds twenty percent (20%) of the original principal amount of the Indebtedness,

with all plans and specifications for such rebuilding or restoration as Mortgagee may reasonably require and which shall be subject to approval by Mortgagee. Unless otherwise provided in the First Mortgage, 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 undisturbed balance of said proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. If, after completion of the work, there are funds remaining, unless otherwise provided in the First Mortgage, said funds shall be either: (A) applied to the unpaid balance of the Indebtedness; or (B) paid to Mortgagor, at the option of Mortgagee in his sole discretion. In case of loss after foreclosure proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied as aforesaid in rebuilding or restoring the building or improvements, shall 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 he shall then be entitled to the same, or as the court may direct. In case of the foreclosure of this Mortgage, the court in its decree may provide that Mortgagee's clause attached to each of said insurance policies may be canceled 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; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statute in such case made and provided, then and in every such case, each successive redeemer may cause the preceding loss clause attached to each insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer. Unless otherwise provided in the First Mortgage, in the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale or to take such other steps as Mortgagee may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

Notwithstanding the foregoing, provided there is no default under the Agreement, Mortgagor shall have the sole and exclusive right to settle and adjust any claim of loss without the prior consent of Mortgagee for a period not to exceed 180 days after the date of such loss.

4. Effect of Extensions of Time. (A) If the payment of Indebtedness or any part thereof is extended or varied or if any part of the security is released, all entities now or at any time hereafter liable therefor, or interested in the Property, shall be held to and the lien and all provisions hereof shall continue in full force, the right of recourse against all such entities being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

(B) No sale of the Property or any part thereof, no forbearance on the part of Mortgagee, and no extension of the time for the payment of the Indebtedness, given by Mortgagee, shall operate to release, modify, change, or affect the original liability of Mortgagor either in whole or in part.

(C) Mortgagee, at his sole option and without notice, may release any part of the Property, or any person liable for the Indebtedness, without in any way affecting the lien hereof upon any part of the Property not expressly released, and may agree with any party obligated on the Indebtedness, or having any interest in the Property, to extend the time for payment of any part or

all of the Indebtedness. Such agreement shall not in any way release or impair the lien hereof, but shall extend the lien hereof as against the title of all parties having any interest in the Property which interest is subject to this Mortgage.

5. Mortgagee's Performance of Defaulted Acts. In case of Default under the Agreement or herein, Mortgagee may, but shall not be obligated to, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and 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 prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Property or contest any tax or assessment. All monies paid for any of the purposes herein authorized and all reasonable expenses paid or incurred in connection therewith, including attorney's fees, and any other monies advanced by Mortgagee to protect the Property and the Lien hereof, shall be so much additional Indebtedness. Mortgagee's exercise of his rights hereunder shall never be considered as a waiver of any right accruing to it on account of any Default on the part of Mortgagor.

6. Mortgagee's Reliance on Tax Bills, etc. Except to the extent covered by the First Mortgage, 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 or amount of any claim for lien which may be asserted.

7. Default; Remedies. If: (A) Defendants default in the due and punctual payment under the Agreement of any installment due in accordance with the terms thereof, either of principal or interest (after notice and expiration of applicable cure and grace periods provided therein); (B) any of Defendants shall file a petition in voluntary bankruptcy or under the Federal Bankruptcy Act or any similar law, state or federal, whether now or hereafter existing, or an 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; (C) any of Defendants guarantor shall be adjudicated a bankrupt, or a trustee or receiver shall be appointed for any of Defendants or for all of its property or the major part thereof in any involuntary proceeding, or any court shall have taken jurisdiction of the property of any of Defendants or the major part thereof in any involuntary proceedings for the reorganization, dissolution, liquidation or winding up of Mortgagor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stay on appeal or otherwise stayed within sixty (60) days; (D) any of Defendants 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; (E) any of Defendants defaults in the due observance or performance of the Agreement; (F) if any representation or warranty made in the Agreement shall prove to have been false or misleading in any material aspect as of the date on which such representation or warranty was made, and the condition which made such representation or warranty false or misleading is not corrected within fifteen (15) business days after written notice given by Mortgagee to Defendants; (G) if the holder of a mortgage or of any other lien on the Property (without hereby implying Mortgagee's consent

to any such mortgage or other lien) institutes foreclosure proceedings or other proceedings for the enforcement of his remedies thereunder and the same remain undischarged, unbonded, or uninsured by title indemnity to Mortgagee's reasonable satisfaction for a period of twenty (20) days; or (H) all or any part of the Property is sold or transferred by Mortgagor (excluding the creation of a lien or encumbrance subordinate to this Mortgage with Mortgagee's written consent) and the unencumbered proceeds of such sale are not paid to Mortgagee to reduce the outstanding principal balance of Agreement as provided herein, then and in every such case the whole of said principal sum of the Indebtedness hereby secured shall, at once, at the option of Mortgagee, become immediately due and payable, together with accrued interest thereon, without notice to Mortgagor. Notwithstanding anything to the contrary in the foregoing, Mortgagee agrees and acknowledges that Mortgagor's liability under this Mortgage and under the Agreement is limited to the Property pledged hereby and Mortgagor shall not be personally liable under the Agreement or for any deficiency under this Mortgage.

8. Foreclosure; Expense of Litigation. When the Indebtedness, or any part thereof, shall become due and shall remain unpaid after the expiration of all applicable cure or grace periods, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof, and in the event of the default in the payment of any amount due under the Agreement and expiration of all applicable cure or grace periods, the owner of the Agreement may accelerate the payment of same and may institute proceedings to foreclose this Mortgage for the entire amount then unpaid with respect to the Agreement. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all reasonable expenditures and reasonable expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such title searches and examinations, title insurance policies, and similar information and assurances with respect to 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 and the value of the Property. All and such expenses and fees as may be incurred in the protection of the Property 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 Agreement or the Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be with interest thereon at the same rate as stated in the Agreement, secured by this Mortgage and added to the Indebtedness.

Mortgagee may employ counsel for advice or other legal service at Mortgagee's reasonable discretion in connection with any dispute as to the obligations of Mortgagor hereunder, or as to the title of Mortgagee to the Property pursuant to this Mortgage, or in any litigation to which Mortgagee may be a party which may affect the title to the Property or the validity of the Indebtedness, and any reasonable attorneys' fees so incurred shall be added to and be a part of the Indebtedness. If Mortgagee prevails in any such dispute or litigation, any costs and expenses reasonably incurred in connection with any dispute or litigation affecting the Indebtedness or Mortgagee's title to the Property, including reasonably estimated amounts to conclude the transaction, shall be added to and be a part of the Indebtedness. All such amounts shall be included as a part of the Indebtedness and

shall include interest at the rate stated in the Agreement from the dates of their respective expenditures. If Mortgagee does not prevail in such dispute or litigation, Mortgagee may not add his costs and expenses to the Indebtedness.

9. Application of Proceeds of Foreclosure Sale. Except to the extent covered in the First Mortgage, the proceeds of any foreclosure sale of the Property 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 Section hereof; second, to all other items which, under the terms of this Mortgage or the Agreement, constitute additional Indebtedness, with interest thereon as herein or therein provided; third, all principal and interest remaining unpaid on the Agreement; and fourth, any balance to Mortgagor, its successors or assigns, as their rights may appear.

10. Appointment of Receiver. Subject to the terms of the First Mortgage, 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 the Property. 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 Property or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any holder of the Agreement may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Property 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 by redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be 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 Property 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: (A) the Indebtedness, 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 foreclosure sale; and (B) the deficiency in case of a sale and deficiency.

11. Mortgagee's Right of Possession in Case of Default. (A) Subject to the terms of the First Mortgage, 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 sum of the Indebtedness secured hereby is declared to be immediately due as aforesaid, 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 Property or any part thereof personally, or by his agents or attorneys, as for condition broken, and Mortgagee in his discretion may, with process of law, enter upon and take and maintain possession of all or any part of the Property, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the Property relating to the operation of the Property, and may exclude Mortgagor, its agents or servants, wholly therefrom and may as attorney in fact or agent of Mortgagor, or in his own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Property, either personally or by his agents, and with full power to use such measures, legal or equitable, as in his discretion or

in the discretion of his successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting 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, and with full power to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same, to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof, to make all necessary or proper repairs, replacements, alterations, additions, and improvements to the Property as may seem necessary to Mortgagee in his reasonable judgment, insure and reinsure the same and all risks incidental to Mortgagee's possession, operations and management thereof and to receive all of such avails, rents, issues and profits. Notwithstanding anything to the contrary set forth herein, Mortgagee shall permit Mortgagor and its successors and/or agents the right to enter upon the Property for the purpose of removal of inventory and equipment in which Mortgagee does not have a security interest.

(B) Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any 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 may be added to the Indebtedness.

12. Application of Income Received by Mortgagee. Mortgagee, in the exercise of the rights and powers conferred upon it by this Mortgage shall have full power to use and shall apply the avails, rents, issues and profits from the sale of any part of the Property to the payment of or on account of the following, in such order as Mortgagee may determine (subject to the terms of the First Mortgage):

(A) to the payment of the operating expenses of the Property including the cost of management and leasing of the Property (which shall include reasonable compensation to Mortgagee and his 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;

(B) to the payment of taxes and special assessments now due or which may hereafter become due on the Property;

(C) to the payment of all repairs, replacements, alterations, additions, and improvements of the Property and of placing said property in such condition as will, in the judgment of Mortgagee, make it readily salable; and

(D) to the payment of any Indebtedness or any deficiency which may result from any foreclosure sale.

13. Mortgagee's Right of Access and Inspection. Mortgagee, his agents and representatives shall have the right to inspect the Property at all reasonable times and upon reasonable notice, and access thereto shall be permitted for that purpose. All such inspections shall be for the sole benefit of Mortgagee and not for the benefit of Mortgagor or any other person. Mortgagor acknowledges that the periodic inspections made by or through Mortgagee are for loan administration purposes only, that neither Mortgagee nor any of his employees, representatives, agents or contractors assumes any responsibility or liability to any person by reason of such inspections and that neither Mortgagor nor any other person may rely upon such inspections for any purpose whatsoever (including, but not limited to, stage of completion, payments due the Contractor or any subcontractors, matters of design, adequacy of workmanship or materials, compliance with law, engineering detail, or conformance to the Approved Plans).

14. Condemnation. Subject to the terms of the First Mortgage, Mortgagor hereby assigns, transfers and sets over to Mortgagee the entire proceeds of any award or any claim for damages for any of the Property taken or damaged under the power of eminent domain or by condemnation. Provided that: (A) the remainder of the Property is sufficient for the practical restoration or rebuilding of the improvements so taken; (B) an Event of Default has not occurred under the Agreement; and (C) Defendant's financial condition has not materially and adversely changed, the proceeds shall be held by Mortgagor for the cost of the rebuilding or restoring of buildings or improvements on the Property, in accordance with plans and specifications to be submitted to and approved by Mortgagee which approval shall not be unreasonably withheld. If the conditions set forth above for use of the condemnation proceeds for restoration or rebuilding are not met, Mortgagee will hold and apply the proceeds to the indebtedness in the order provided in Section 13 hereof. In the event Mortgagor is required or authorized, by Mortgagee's elections aforesaid, to rebuild or restore, the proceeds of the award shall be paid out in the same manner as is provided in Section 3 hereof for the payment of insurance proceeds toward the cost of rebuilding or restoration.

15. Waiver of Defense. No action for the enforcement of the lien or of any provisions 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 Agreement.

16. Waiver of Statutory Rights. Mortgagor shall not and will not apply for or avail itself of any appraisalment, 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 right to have the property and estates comprising the Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the mortgaged property sold as an entirety. To the extent permitted by law, Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on its behalf and on behalf of each and every person, except decree or judgment creditors of Mortgagor, acquiring any interest in or title to the Property subsequent to the date of this Mortgage.

17. Mortgagor's Additional Covenants. Mortgagor further covenants and agrees with Mortgagee, his successors and assigns, as follows:

(A) Mortgagor's Obligations in the Event of Casualty. In the event of the happening of any casualty, of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (including any casualty for which insurance was not obtained or obtainable) resulting in damage to or destruction of the Property or any part thereof in excess of \$100,000.00, Mortgagor will give notice thereof to Mortgagee, and will promptly, at Mortgagor's sole cost and expense (whether or not there are sufficient and available insurance proceeds) commence and diligently continue to restore, replace, repair or rebuild the Property to be of at least equal value and substantially the same character and condition as prior to such casualty; provided that in any case where Mortgagee has elected to use insurance loss proceeds to apply on the Indebtedness, the provisions of this subsection shall not apply.

(B) Compliance with Laws. Mortgagor will comply in all material respects with all laws, ordinances, regulations, and orders of all governmental authorities applicable to its business or the use of its properties. Mortgagor may contest, in good faith, any such law, ordinance, regulation, or order and withhold compliance during any proceeding, including appropriate appeals, so long as Mortgagee's lien on the Property, in the reasonable opinion of Mortgagee, is not jeopardized.

(C) Payment of Taxes. Mortgagor shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the Property when due, and shall, upon reasonable written request, furnish to Mortgagee duplicate receipts therefor. To prevent default hereunder Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagor may desire to contest.

(D) Zoning Changes. Mortgagor will not initiate or acquiesce in any zoning change without Mortgagee's written consent, which consent shall not be unreasonably withheld.

(E) Demolition. No building or other property now or hereafter covered by the lien of this Mortgage shall be removed, demolished or materially altered, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld. Mortgagor shall have the right to remove and dispose of, free from the lien of this Mortgage, such equipment used in connection with the operation of the Property as from time to time may become worn out or obsolete in Mortgagor's reasonable judgment, provided that if Defendants are in default under the Agreement: (i) simultaneously with or prior to the removal any equipment used in connection with the operation of the Property, Mortgagor replaces it with other equipment, by such replacement Mortgagor shall be deemed to have subjected such equipment to the lien of this Mortgage.

(F) No Transfer. Mortgagor will not, without the prior written consent of Mortgagee, transfer, convey (including a conveyance to a land trust, except as otherwise provided below), assign, further mortgage, or otherwise additionally encumber the Property or any part thereof. Mortgagor shall be permitted to convey the Property to a land trust of which Mortgagor is the beneficiary or to a partnership of which Mortgagor is the general partner provided that: (i) Mortgagor obtains the prior written consent of Mortgagee to such conveyance; and (ii) Mortgagor executes such additional documentation as may be reasonably required by Mortgagee and his

counsel to protect and maintain Mortgagee's security interest in the Property upon such conveyance, including, in the case of a permitted conveyance to a land trust, granting a security interest in the beneficial interest of such land trust. The cost of such additional documentation will be at Mortgagor's sole expense. Mortgagor shall also upon written notice to Mortgagee, be entitled to refinance, reduce, satisfy or replace the First Mortgage upon any terms which Mortgagor deems reasonable subject only to the obligation not to reduce or impair the position or security of Mortgagee.

18. Assignment of Rents and Leases. (A) To further secure the Indebtedness, Mortgagor hereby sells, assigns, and transfers to Mortgagee all the rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use of occupancy of the Property or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all of such leases and agreements, and all the avails thereunder, to Mortgagee, subject to the terms of the First Mortgage. Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney in its name and stead (with or without taking possession of the Property as provided herein) subject to the terms of the First Mortgage to rent, lease or let all or any portion of the Property to any party or parties at such rental and upon such terms as said Mortgagee shall, in his discretion, determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due or that may hereafter become due under each and every of the leases and agreements, written or verbal or other tenancy existing, or which may hereafter exist on the Property, applying same in accordance with Section 13 above with the same rights and powers and subject to the same immunities, exoneration of liability Mortgagee would have upon taking possession pursuant to the provisions of hereof.

(B) Nothing herein contained shall be construed as constituting Mortgagee as a mortgagee in possession in the absence of the taking of actual possession of the Property by Mortgagee pursuant hereto. In the exercise of the powers herein granted Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor unless the exercise of such powers was in breach of this Mortgage or the Agreement, or if such exercise was wrongfully arbitrary or in bad faith.

(C) Mortgagor further agrees to assign and transfer to Mortgagee all future leases upon all or any part of the Property and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments in the Property as Mortgagee shall from time to time require, subject to the terms of the First Mortgage.

(D) Although it is the intention of the parties that the assignment contained in this Section shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that so long as Defendants are not in default under the Agreement (after the expiration of all applicable cure or grace periods) Mortgagor shall have the privilege of collecting and retaining the rents accruing under the leases assigned hereby, until such time as Mortgagee shall elect to collect such rents pursuant to the terms and provisions of this Mortgage.

19. Security Agreement. This Mortgage shall be deemed a Security Agreement as defined in the Uniform Commercial Code (the "Code"). This Mortgage creates a security interest in favor of Mortgagee in the Property subject to prior encumbrances, liens and security interests.

(A) The remedies for any violation of the covenants, terms and conditions of the agreements contained herein or in the Agreement shall be: (1) as prescribed herein and in the Agreement; (2) by general law; or (3) 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 hereafter enacted and specified in the Code, all at Mortgagee's sole election.

(B) Mortgagor and Mortgagee agree that the filing of a Financing Statement in the records normally having to do with personal property shall never be construed as in any way derogating from or impairing this declaration and the stated intention of the parties hereto, 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 (1) any such item is physically attached to the improvements; (2) 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 Mortgagee; and (3) any such item is referred to or reflected in any Financing Statement so filed at any time.

(C) The mention in any Financing Statement of: (1) the rights in or the proceeds of any fire and/or hazard insurance policy; (2) an award in eminent domain proceedings for a taking or for loss of value; or (3) the debtor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Property, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Mortgagee as determined by this instrument or impugning the priority of Mortgagee'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 Mortgagee in the event any court or judge shall at any time hold with respect to (1), (2) and (3) that notice of Mortgagee'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 Commercial Code records.

(D) Notwithstanding the foregoing, Mortgagor covenants and agrees that so long as any balance remains unpaid on the Agreement, it will execute (or cause to be executed) and delivered to Mortgagee, such extension statements or other documentation in proper form, so as to keep perfected the lien created by any Security Agreement and Financing Statement given to Mortgagee by Mortgagor, and to keep and maintain the same in full force and effect until the entire Indebtedness and all interest to accrue thereunder has been paid in full. The failure of Mortgagor to provide any such document within fifteen (15) days after Mortgagee's request shall constitute a Default hereunder and under the Agreement.

(E) Property Taxes and Contest of Liens. Mortgagor shall be responsible for the payment, when first due and owing and before any penalty attaches, of all taxes and assessments (general or special), water charges, sewer charges, and any other charges, fees, taxes, claims, levies, charges, expenses, liens, and assessments, ordinary or extraordinary, governmental or

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non-governmental, statutory or otherwise, that may be asserted against the Property or any part thereof or interest ("Taxes").

20. Warranties and Representations. Mortgagor represents and warrants to Mortgagee as follows:

(A) Mortgagor is a limited liability company organized and in good standing under the laws of the State of Illinois and has full corporate power to enter into this Mortgage and the Agreement executed concurrently herewith.

(B) Mortgagor is not in violation of any applicable statute, rule, regulation or ordinance of any governmental entity, in any respect materially and adversely affecting the Property or Mortgagor's business.

(C) Mortgagor is not in material default under any indenture, loan agreement, mortgage, lease, franchise agreement or other agreement of any kind to which it is a party or by which it is or may be bound.

(D) This Mortgage and the Agreement and other documents to be executed and delivered in connection with this Mortgage and the Agreement have been duly authorized and when executed and delivered pursuant hereto will constitute the duly authorized obligations of the party or parties (other than Mortgagee) executing the same and will be legal, valid, binding, and enforceable in accordance with their respective terms.

(E) The execution, delivery and performance by Mortgagor of this Agreement shall not, by their execution or performance, the lapse of time, the giving of notice or otherwise, constitute a violation of any applicable law, rule or regulation or a breach of any provision contained in Mortgagor's Operating Agreement or contained in any agreement, instrument, indenture or other document to which Mortgagor is now a party or by which it is or may be bound.

(F) There is no claim, litigation, proceeding, or governmental investigation, pending or, to the best knowledge of Mortgagor, threatened, against Mortgagor, the Property, or relating to its business, or the ability of Mortgagor to perform under this Mortgage.

(G) No person or entity has any right of first refusal or any option to acquire title to any of the Property except to the extent of the First Mortgage.

(H) Neither this Mortgage nor the Agreement nor any document, financial statement, credit information, certificate or statement furnished to Mortgagee by Mortgagor contains, or will contain, any untrue statement of a material fact or omits, or will omit, to state a material fact necessary to make the statements made not misleading.

(I) Except only for any liens or claims arising from or relating to presently outstanding credit provided by Grand National Bank, the First Mortgage and related UCC filings, the Property

is not subject to any mortgage, pledge, title retention lien, or other lien, encumbrance or security interest.

21. General Provisions.

(A) Binding on Successors and Assigns. This Mortgage and all provisions hereof shall extend to and be binding upon Mortgagor 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 Indebtedness or any part thereof, whether or not such persons shall have executed the Agreement or this Mortgage. The word "Mortgagee" when used herein shall include the successors and assigns of Mortgagee named herein, and the holder or holders, from time to time, of the Agreement.

(B) Captions. The captions and headings of various sections of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope, intent, or meaning of the provisions of this Mortgage.

(C) Defeasance. Upon payment by Defendants to Mortgagee of the Indebtedness and all other sums payable under this Mortgage, which payment is made either: (1) at or after the due date specified in the Agreement (including any extension as provided therein); or (2) prior to the due date of the Agreement and is accompanied by a written statement by Mortgagor that no further draws will be made under the Agreement, and such payment is made in accordance with the provisions of the Agreement and in the manner and at the times therein set forth, without deduction, fraud, or delay, then this Mortgage, and the estate hereby granted, shall cease and become void.

(D) Release. Mortgagee shall release this Mortgage and the liens created hereby by proper instrument upon payment and discharge of all Indebtedness. Mortgagor shall pay to Mortgagee a reasonable fee not to exceed \$100 for the preparation of any release instruments.

(E) Incorporation of Riders, Exhibits and Addenda. All riders, exhibits and addenda attached to this Mortgage are by express reference incorporated into and made a part of this Mortgage. The covenants contained in each of said riders, exhibits and addenda and the other things therein set forth shall have the same force and effect as though set forth in this Mortgage.

(F) Assurances of Cooperation. The parties agree that they will, at any time after the execution of this Mortgage, and from time to time, execute, acknowledge, and deliver or cause to be executed, acknowledged and delivered to each other the various documents which shall be reasonably required to carry out the various undertakings under this Mortgage and the creation or perfection of any security interest contemplated by this Mortgage. The parties further agree that each of them will use reasonable and diligent efforts to cause the conditions precedent hereto, if any, to be met.

(G) No Waiver. No failure by Mortgagor to exercise, or delay by Mortgagor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further

exercise thereof, or the exercise of any other right, power or privilege. No notice to or demand on Mortgagee in any case shall, in itself, entitle Mortgagee to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Mortgagor to any other or further action in any circumstances without notice or demand.

(H) Rights and Remedies Cumulative. All of Mortgagor's rights and remedies, whether set forth in this Mortgage or in the Agreement, or in any other writing, are not exclusive of any right or remedy provided by law; all such rights and remedies shall be cumulative and may be exercised singularly or concurrently. Election by Mortgagor to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Mortgagee under this Mortgage, after the failure of Mortgagor to perform, shall not affect Mortgagee's right to declare a Default and exercise its remedies.

(I) Notices. Any communications, requests or notices required or appropriate to be given under this Mortgage shall be in writing and deemed given when delivered in person or three (3) business days after mailing when mailed by certified mail, return receipt requested, deposited in the United States mail postage prepaid, addressed to the party for whom the notice is intended as follows:

If to Mortgagor: Mr. August C. Ghilarducci
Pacell Holdings, LLC
28 W 100 St. Charles Road
West Chicago, Illinois 60185

with a copy to: Eric L. Singer, Esq.
McBride Baker & Coles
One Mid America Plaza
Suite 1000
Oak Brook Terrace, Illinois 60181-4710

If to Mortgagee: Mr. Robert F. Smith
C/o Oak Brook Management
2215 York Road
Oak Brook, Illinois 60521

with a copy to: Jerome F. Crotty, Esq.
Rieck and Crotty, P.C.
55 West Monroe Street
Suite 3390
Chicago, Illinois 60603

These addresses may be changed by notice as provided herein.

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(J) Severability. If any term or provision hereof should be held to be invalid, unenforceable, or illegal, such holding shall not invalidate or render unenforceable any other provision hereof, and the remaining provisions shall not be impaired thereby.

22. Notwithstanding anything to the contrary in any of the foregoing, the parties agree and affirm that Mortgagor's liability under this Mortgage and under the Agreement is limited to the property pledged hereby and Mortgagor shall not be personally liable under the Agreement or for any payment, obligation or deficiency under this Mortgage.

IN WITNESS WHEREOF, Mortgagor has signed this instrument on the day and year first set forth above.

MORTGAGOR:

Pacelli Holdings, LLC,
an Illinois limited liability company

By: 

August E. Ghilarducci, President

ATTEST:

By: 

Marie A. Ghilarducci, Secretary

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EXHIBIT A

LOT "D" (EXCEPT THE NORTH 17 FEET THEREOF) IN INSALACO'S RESUBDIVISION OF LOTS 9 AND 10 IN BLOCK 2 IN ARTHUR T. MCINTOSH AND CO'S BREMEN FARMS, BEING A SUBDIVISION OF THAT PART OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 3, TOWNSHIP 36 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF THE SOUTH 33 FEET THEREOF AND SOUTH OF THE CENTER LINE OF THE MIDLOTHIAN TURNPIKE, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 5, 1924 AS DOCUMENT 8695046, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

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