

# UNOFFICIAL COPY

## JUNIOR MORTGAGE

THIS INDENTURE is made this 12<sup>th</sup> day of November 2004, between Doran Phillips of 1240 N. Wood St., Chicago, Illinois 60622 (hereinafter referred to as "Mortgagor"), and Geier Enterprises, Inc., an Illinois corporation ("Mortgagee").



Doc#: 0432239115  
Eugene "Gene" Moore Fee: \$36.50  
Cook County Recorder of Deeds  
Date: 11/17/2004 03:23 PM Pg: 1 of 7

WHEREAS, Phillips Randolph Enterprises, LLC, an Illinois limited liability company, of which Mortgagor is an affiliate, is indebted to Mortgagee in the principal sum of Four Hundred Thousand Dollars (\$400,000.00) plus interest and additional amounts as evidenced by a certain Secured Installment Note dated November 12, 2004 made payable to the order of Mortgagee and heretofore delivered to Mortgagee ("Note"), from which loan Mortgagor will personally benefit;

NOW THEREFORE, to secure the payment of the said principal, interest and other amounts in accordance with the terms and provisions of the Note and the performance of the covenants and agreements herein contained by the Mortgagor to be performed, and also in consideration of the sum of One and 00/100 Dollar (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, Mortgagor does by these presents CONVEYS and WARRANTS unto the Mortgagee, its successors and assigns, that certain real estate and all of its estate, right, title and interest therein, situated, lying and being in the County of Cook and State of Illinois, legally described in Exhibit A attached hereto, which, with the property hereinafter described, is referred to herein as the "Premises",

TOGETHER with all improvements, 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 party with real estate and not secondarily), and all apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power refrigeration (whether single units or centrally controlled), and ventilation including, without restricting the foregoing, screens, window shades, storm doors and windows, floor coverings, awnings, stoves and water heaters. All of the foregoing are declared to be a part of said real estate whether physically attached thereto or not, and it is agreed that all similar apparatus, equipment or articles hereafter placed in or on the Premises by Mortgagor or its heirs, successors or assigns shall be considered as constituting part of the real estate.

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

Rieck and Crotty, P.C.  
55 West Monroe Street, Suite 3390  
Chicago, Illinois 60601

**PERMANENT INDEX NUMBER:**

17-06-302-032-0000

**ADDRESS OF PROPERTY:**

2116 W. Haddon  
Chicago, Illinois 60622

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

1. Mortgagor shall: (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or by destroyed; (b) keep said Premises in good condition and repair, without waste, and free from mechanic's or other 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 Premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee or to the holder of the Note; (d) complete within a reasonable time any building or buildings now or at any time in process of erection upon said Premises; (e) comply with all requirements of law or municipal ordinances with respect to the Premises and the use thereof; (f) make no material alterations in said Premises except as required by law or municipal ordinance.

2. 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 Premises when due, and shall, upon written request, furnish to Mortgagee or to the holder of the Note 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.

3. Mortgagor shall keep all buildings and improvements now or hereafter situated on said Premises insured against loss or damage by fire, lightning or windstorm (and flood damage, if so requested by Mortgagee), under policies providing for payment of insurance proceeds in an amount sufficient either to pay the cost of replacing or repairing the same or to pay in full the indebtedness secured hereby, all in companies, and under terms and conditions, satisfactory to Mortgagee or the holder of the Note, under insurance policies payable in case of loss or damage, to Mortgagee for the benefit of the holder of the Note, such rights to be evidenced by the standard Mortgage clause to be attached to each policy, and Mortgagor shall deliver a copy of all policies, including additional and renewal policies, to Mortgagee, and in case of insurance about to expire, shall deliver to same a copy of renewal policies not less than ten days prior to the respective dates of expiration.

4. In case of default herein, or under the Note, Mortgagee or the holder of the Note may, but need not, make any payment or perform any act hereinbefore 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 purchaser, 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 said Premises or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all reasonable expenses paid or incurred in connection therewith, including but not limited to, reasonable attorneys' fees and court costs, and any other reasonable expenses and costs advanced by Mortgagee or the holder of the Note to protect the mortgaged Premises and the lien hereof, plus reasonable compensation to Mortgagee for each matter concerning which action herein authorized may be taken, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at a rate equivalent to the post-demand rate set forth in the Note

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securing this Mortgage. Inaction of Mortgagee or the holder of the Note shall never be considered as a waiver of any right accruing to them on account of any default hereunder on the part of Mortgagor.

5. Mortgagee or the holder of the Note hereby secured making any payment hereby authorized relating to taxes or 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.

6. Mortgagor shall pay each item of indebtedness herein mentioned, both principal and interest, when due according to the terms hereof. At the option of the holder of the Note, and with five days prior written notice to Mortgagor, all unpaid indebtedness secured by this Mortgage shall notwithstanding anything in the Note or in this Mortgage to the contrary, become due and payable: (a) immediately in the case of default in making payment of any principal or interest on the Note; or (b) when default shall occur and continue for three days in the performance of any other agreement of Mortgagor herein contained.

7. When the indebtedness hereby secured shall become due, Mortgagee or the holder of the Note shall have the right to foreclose the lien hereof. 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 expenses which may be paid or incurred by or on behalf of Mortgagee or holder of the Note 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, and similar data and assurance with respect to title as Mortgagee or the holder of the Note may deem to be 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 expenditures and expenses of the nature in this paragraph mentioned shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon at a rate equivalent to the post-demand rate set forth in the Note securing this Mortgage, when paid or incurred by Mortgagee or the holder of the Note in connection with: (a) any proceeding, including probate and bankruptcy proceedings, to which either of them shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured; or (b) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (c) preparations for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced.

8. 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 reasonable 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 under the terms hereof, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; Third, all principal and interest, remaining unpaid on the Note; Fourth, any remaining

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amount to Mortgagor, its heirs, successors or assigns, as their rights may appear.

9. Upon, or at any time after the filing of a bill to foreclose this Mortgage, the court in which such bill 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 then occupied as a homestead or not and the Mortgagee hereunder may be appointed as 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 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: (a) 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 line hereof or of such decree, provided such application is made prior to foreclosure sale; (b) the deficiency in case of a sale and deficiency.

10. 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.

11. Mortgagee or the holder of the Note shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

12. Mortgagee has no duty to examine the title, location, existence or condition of the Premises, or to inquire into the validity of the signatures or the identity, capacity, or authority of the signatories on the Note or Mortgage, nor shall Mortgagee be obligated to record this Mortgage or to exercise any power herein given unless expressly obligated by the terms hereof, nor be liable for any acts or omissions hereunder, except in case of his own gross negligence or misconduct or that of the agents or employed by Mortgagee, and he may require indemnities satisfactory to him before exercising any power herein given.

13. Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon presentation of satisfactory evidence that all indebtedness secured hereby has been fully paid; and Mortgagee may execute and deliver a release hereof to and at the request of any person who shall, either before or after maturity thereof, produce and exhibit to Mortgagee the Note representing that all indebtedness hereby secured has been paid, which representation Mortgagee may accept as true without inquiry.

14. 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

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the Note or this Mortgage.

15. Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, except decree or judgment creditors of Mortgagor, acquiring any interest in or title to the Premises subsequent to the date of this Mortgage.

16. The provisions of the laws of the State of Illinois shall be applicable to this Mortgage.

17. Mortgagor shall not hereafter suffer, tolerate, permit, grant or cause to be filed any lien, mortgage, trust deed, security interest or encumbrances against the Premises without the prior written consent of Mortgagee, Mortgagor shall not sell (including execution of Articles of Agreement), assign, transfer, convey or otherwise dispose of the Premises, any portion thereof, or legal or equitable interest therein or suffer, tolerate or permit any assignment of the beneficial interest in Mortgagor or Mortgagor's heirs, successors and assigns without the prior written consent of Mortgagee, and, in the absence of such consent, all principal and interest payable hereunder should be accelerated and be immediately due and payable upon the date of any of the foregoing transactions or events. Notwithstanding anything contained herein to the contrary, in the event that Mortgagor has at all times hereafter timely performed its duties and obligations hereunder and under the Note, and the Asset Purchase Agreement and Guaranty referenced therein, Mortgagor may, upon at least thirty (30) days prior written notice to Mortgagee and upon receipt of Mortgagee's prior written, which consent shall not be unreasonably withheld: (i) refinance the Senior Indebtedness (as hereinafter defined) upon terms and conditions substantially similar to those set forth in the Senior Loan Documents (as hereinafter defined) and in a principal amount not exceeding the initial principal amount of the indebtedness set forth in the Senior Loan Documents; or (ii) assign, transfer, convey or otherwise dispose of the Premises, subject to Mortgagor's prior grant to Mortgagee of a security interest in and to substitute real property or other collateral reasonably acceptable to Mortgagee and Mortgagor's execution and delivery of a substitute mortgage and/or collateral pledge and security agreement containing terms and conditions, and in form and substance, substantially similar to the terms and conditions set forth herein. In the event of the occurrence of either event described in clauses (i) and (ii) of the preceding sentence, Mortgagor shall pay to Mortgagee as a principal reduction hereunder, an amount equal to twenty percent (20%) of the net cash proceeds received by Mortgagor following payment of reasonable and customary financing, title, closing and legal costs arising therefrom or relating thereto.

18. Mortgagee and Mortgagor acknowledge and agree that the Premises presently are subject to prior security interests and mortgage liens granted in favor of Citibank, N.A., its affiliates, and/or their successors and assigns, and securing the repayment of aggregate indebtedness of approximately \$375,000 (the "Senior Indebtedness"). Mortgagor represents and warrants that he has fully performed as required by any and all documents effecting or evidencing the Senior Indebtedness (the "Senior Loan Documents") and that he is not now in default of any provision thereunder. Mortgagor shall, at all times during which any principal, interest or other amount remains outstanding and payable under the Note, continue to comply with and fully perform as required by any and all terms and conditions of the Senior Loan

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Documents and agrees that any default thereunder shall constitute a default hereunder and under the Note. Mortgagor shall within five (5) days of receipt provide to Mortgagee a copy of any and all correspondence and notices received by Mortgagor arising from or relating to the Senior Indebtedness or the Senior Loan Documents and will forever hold harmless and indemnify Mortgagee from and against any and all claims, liabilities, losses, costs and expenses including, but not limited to, attorneys fees and court costs, arising from or relating to the Senior Indebtedness and the Senior Loan Documents or any default by Mortgagor thereunder.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS MORTGAGE, THE NOTE, OR THE ASSET PURCHASE AGREEMENT OF EVEN DATE HERewith BY AND BETWEEN BUYER, MORTGAGEE, AND MORTGAGOR, AND THE DOCUMENTS CONTEMPLATED THEREBY, THE SECURITY INTEREST GRANTED HEREBY IS LIMITED TO \$300,000 IN PRINCIPAL AND INTEREST PAYABLE HEREUNDER OR UNDER THE NOTE AND, IN ADDITION, THE AMOUNT OF ANY EXPENDITURES AND EXPENSES WHICH MAY BE PAID OR INCURRED BY OR ON BEHALF OF MORTGAGEE IN ENFORCING ITS RIGHTS HEREUNDER.

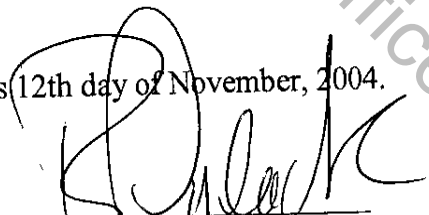
IN WITNESS WHEREOF, Mortgagor has signed this Mortgage on the date first set forth above.

  
Doran Phillips

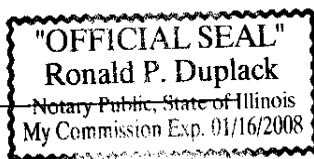
STATE OF ILLINOIS)  
  ) SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for the County of Cook and State of Illinois, do hereby certify that Doran Phillips, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument, as his free and voluntary act, for the uses and purposes set forth therein.

Given under my hand and Notarial Seal this 12th day of November, 2004.

  
Notary Public

My Commission Expires: \_\_\_\_\_



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## EXHIBIT "A"

### LEGAL DESCRIPTION OF THE MORTGAGED PROPERTY

LOT 43 IN THE SUBDIVISION OF THE NORTH PART OF BLOCK 2 IN SUFFAN'S  
SUBDIVISION OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 14  
EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Address: 2116 W. Haddon, Chicago, Illinois 60622

PIN: 17-06-302-032-0000

Property of Cook County Clerk's Office