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THIS DOCUMENT PREPARED BY  
AND UPON RECORDING IS TO  
BE RETURNED TO:  
DAVID J. FISCHER  
WILDMAN, HARROLD, ALLEN  
& DIXON LLP  
225 WEST WACKER DRIVE  
CHICAGO, ILLINOIS 60606



Doc#: 0507533227  
Eugene "Gene" Moore Fee: \$112.00  
Cook County Recorder of Deeds  
Date: 03/16/2005 01:36 PM Pg: 1 of 45

## MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (this "Mortgage") is made effective as of this 14<sup>th</sup> day of March, 2005, by PHOENIX II, LLC, an Illinois limited liability company, having its principal office at 1930 N. Thoreau Dr., Suite 186, Schaumburg, IL 60173, in favor of MERCHANTS AND MANUFACTURERS BANK, an Illinois banking association, having its principal office at 801 S. Briggs Street, Joliet, Illinois 60433 (hereinafter referred to as "Mortgagee").

WITNESSETH, Mortgagor (defined below) hereby mortgages, conveys, transfers and grants a security interest in the Mortgaged Premises (defined below) to Mortgagee as security for (i) the payment of indebtedness in the aggregate amount of TWO MILLION ONE HUNDRED THIRTY-FIVE THOUSAND AND NO/100 DOLLARS (\$2,135,000.00) lawful money of the United States, to be paid with interest thereon according to the Notes (defined below) bearing even date herewith, and any amendments, modifications, renewals or replacements thereof; (ii) the Indebtedness (defined below); (iii) any other sums of money secured hereby, as hereinafter provided and (iv) performance of Mortgagor's (defined below) obligations under the Loan Documents (defined below).

And Mortgagor covenants and represents with Mortgagee as follows: Definitions. Whenever used in this Mortgage, the following terms, when capitalized, shall have the following respective meanings unless the context shall clearly indicate otherwise:

"Act" shall mean the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101, as the same may have been or shall be amended.

"Default Rate" shall have the respective meanings given to it in the Notes.

"Environmental Indemnity Agreement" means that certain Environmental Indemnity Agreement executed by Mortgagor in favor of Mortgagee regarding the Mortgaged Premises in form acceptable to Mortgagee.

"Event of Default" is defined in Section 17.

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“Fixtures” shall mean all materials, supplies, machinery, equipment, fittings, structures, apparatus and other items now or hereafter attached to, installed in or used in connection with, temporarily or permanently, the Mortgaged Premises, including but not limited to any and all partitions, window screens and shades, drapes, rugs and other floor coverings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, plumbing, laundry, incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, freezers, storm shutters and awnings, telephone and other communication systems and equipment, security systems and equipment, master antennas and cable television systems and equipment, whether detached or detachable, and recreational equipment and facilities of all kinds other than those items owned by tenants of the Mortgaged Premises or other parties unrelated to Mortgagor.

“Full Insurable Value” shall mean replacement cost, exclusive of costs of excavation, foundations and footings below the lowest basement floor, or the original principal balance on the Notes, whichever is greater.

“Guaranty” shall mean that certain guaranty dated as of the date hereof by Richard and Jane McCaffrey in favor of Mortgagee.

“Impositions” shall mean all real estate and personal property taxes, water, gas, sewer, electricity, and other utility rates and charges, charges for any easement, license or agreement maintained for the benefit of the Mortgaged Premises, and all other liens with respect thereto, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Mortgaged Premises or the rents, issues and profits or the ownership, use, occupancy or enjoyment thereof.

“Indebtedness” shall mean all obligations of Mortgagor under this Mortgage and the other Loan Documents, and all other obligations of every kind and description of Mortgagor in favor of Mortgagee, its successors and assigns, howsoever created, arising or evidenced, whether direct or indirect, primary or secondary, absolute or contingent, joint or several, fixed or otherwise, due or to become due, acquired by discount, howsoever created, evidenced or arising and howsoever acquired by Mortgagee, as well as any and all renewals and extensions thereof, including obligations of payment and performance under any agreements, documents, instruments or writings now or hereafter executed or delivered by Mortgagor to Mortgagee.

“Loan” shall mean the loans as evidenced by the Revolving Note and the Mortgage Note and any renewals, extensions, modifications or amendments to either of them.

“Loan Documents” shall have the meaning give to it in the Mortgage Note.

“Loan Rate” shall mean the interest rates set forth in the Notes.

“LTV Ratio” shall mean the ratio of the Principal Balance of the Mortgage Note to the Market Value of the Mortgaged Premises.

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“Net Sales Price” shall mean the gross sales price received by the Mortgagor with respect to each lot contained in the Mortgaged Premises minus expenses related to such sale including, but not limited to, fees charged by the Village of Streamwood pursuant to the Redevelopment Agreement, taxes, broker fees paid to unaffiliated third parties and any fees required to remove any liens from the Mortgaged Premises.

“Market Value” shall mean the value allocated to the Mortgaged Premises in the most recent appraisal performed on behalf of Mortgagee.

“Mortgaged Premises” shall mean all of Mortgagor’s present or future estates in the Property, Personalty and Fixtures, together with all of the property, rights and interests described on attached Exhibit A.

“Mortgagee” shall mean Merchants and Manufacturers Bank and its successors and assigns.

“Mortgagor” shall mean the owner of the Mortgaged Premises.

“Notes” shall mean collectively, the Revolving Note and the Mortgage Note.

“Permitted Encumbrances” shall mean this Mortgage and other matters (if any) as set forth in the Schedule of Permitted Encumbrances attached hereto as Exhibit “B” and incorporated herein, and the lien and security interests created by the Loan Documents.

“Personalty” shall mean all of the right, title and interest of Mortgagor in and to all Fixtures, furniture, furnishings, and all other personal property of any kind or character, temporary or permanent, now or hereafter located upon within or about the Mortgaged Premises which are necessary for the operation of the Mortgaged Premises, (excluding personal property owned by tenants in possession), together with any and all accessions, replacements, substitutions, and additions thereto or therefor and the proceeds thereof.

“Principal Balance” shall mean the unpaid principal balance of the Notes.

“Principal Sum” shall mean Two Million One Hundred Thirty-Five Thousand and No/100 Dollars (\$2,135,000.00).

“Prohibited Transfer” shall mean a transfer as defined in Paragraph 9 herein.

“Property” shall mean the real property located at \_\_\_\_\_, Phoenix Lake Business Park, Streamwood, Illinois and legally described on Exhibit “A” which is attached hereto and made a part hereof, together with all of the other property described on attached Exhibit “A”.

“Redevelopment Agreement” means that certain Redevelopment Agreement between the Village of Streamwood and Mortgagor dated as of September 20, 2001.

“Rents” means all the rents, issues and profits of the Mortgaged Premises and any and all present and future leases or other agreements relative to the occupancy of the Mortgaged

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Premises and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money made as advance rent or for security) under such leases or agreements, including, without limitation, all cash or security deposits, advance rentals and deposits or payments of a similar nature, together with the right, but not the obligation, to collect, receive, and receipt for all such rents or revenues and apply them to the indebtedness secured hereby and to demand, sue for and recover the same when due or payable

“Revolving Note” shall mean that certain promissory note executed by Mortgagor in favor of Mortgagee dated as of the date hereof in the original principal amount of THREE HUNDRED FIVE THOUSAND AND NO/100 (\$305,000).

“Subordination Agreement” shall mean that form of subordination agreement attached hereto as Exhibit “C”.

“Title Company” shall mean Chicago Title Insurance Company.

2. Payment of Indebtedness. Mortgagor will pay the indebtedness as provided in the Notes and will otherwise duly comply with the terms thereof.

3. Representations as to the Mortgaged Premises. Mortgagor represents and covenants that:

(a) Mortgagor is the holder of the fee simple title to the Mortgaged Premises subject only to the Permitted Encumbrances; Mortgagor has full legal power, right and authority to mortgage and convey the Mortgaged Premises; and this Mortgage creates a valid first lien on the Mortgaged Premises.

(b) The execution and delivery of the Loan Documents and the performance by Mortgagor of its obligations thereunder have been duly authorized by all necessary action and, to the best of Mortgagor’s knowledge, will not violate any provision of law;

(c) All utility and municipal services required for the occupancy and operation of the Mortgaged Premises, including, but not limited to, water supply, storm and sanitary sewage disposal systems, gas, electric and telephone facilities are presently installed at the Mortgaged Premises, and written permission has been obtained from the applicable utility companies, Federal, State and local regulatory authorities or municipalities to connect the Mortgaged Premises into each of said services;

(d) All governmental permits and licenses required by applicable law to occupy and operate the Mortgaged Premises have been issued (or if not issuable at this time shall be issued in due course, at the appropriate time) and are in full force;

(e) To the best of their knowledge, the storm and sanitary sewage disposal system, water system and all mechanical systems of the Mortgaged Premises do comply with all applicable environmental, pollution control and ecological laws, ordinances, rules and regulations, and the applicable environmental protection agency, pollution control board and/or other governmental agencies having jurisdiction of the Mortgaged Premises have issued their permits for the operation of those systems;

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(f) There are no encroachments upon any building line, set back line, sideyard line, or any recorded or visible easement (or other easement of which Mortgagor is aware or have reason to believe may exist) which exists with respect to the Mortgaged Premises;

(g) Mortgagor is and will be the lawful owner of all of the Mortgaged Premises, free of any and all liens and claims whatsoever, other than the security interest hereunder and the Permitted Encumbrances;

(h) All information furnished to Mortgagee concerning the Mortgaged Premises and financial affairs of Mortgagor and all other written information heretofore or hereafter furnished by Mortgagor to Mortgagee, is and will be true and correct in all material respects;

(i) All financial statements delivered to Mortgagee are true and correct, and fairly present the financial condition of Mortgagor.

(j) There are no actions, suits or proceedings pending or, to the best of Mortgagor's knowledge, threatened, before or by any court, regulatory or governmental agency, or public board or body, against or affecting the Mortgaged Premises or Mortgagor;

(k) Mortgagor has not received any notice of, nor has any knowledge of any intention to initiate any actions, suits or proceedings pending or threatened by any regulatory or governmental agency or public board or body to acquire the Mortgaged Premises by eminent domain or condemnation proceedings.

(l) There are no leases or other use or occupancy agreements affecting the Mortgaged Premises except those leases and agreements, if any, previously disclosed in writing to Mortgagee;

(m) All representations, covenants and warranties contained in the Notes, to the extent not inconsistent herewith, are hereby incorporated herein by reference;

(n) All representations, covenants and warranties contained herein and in the Notes are true and correct in all material respects as of the date hereof. Mortgagor shall not take any action or omit to take any action which shall cause any representations or warranties to become untrue. Mortgagor shall immediately notify Mortgagee if any representations or warranties shall become untrue in any material respect. Each time Mortgagee disburses the proceeds of the Loan, such disbursement shall be deemed to be a recertification of the representations, covenants and warranties contained herein or in the other Loan Documents. All representations, covenants, and warranties contained herein and in the other Loan Documents shall be deemed to have been relied on by Mortgagee notwithstanding any investigation made by Mortgagee or on its behalf;

(o) Mortgagor shall protect, defend, indemnify and hold Mortgagee harmless from and against all loss, cost, liability and expense, including without limitation, reasonable attorneys' fees incurred or suffered by Mortgagee as a result of any claim for a broker's or finder's fee asserted against Mortgagee by any person or entity claiming to have been employed



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by Mortgagor or anyone claiming by, through or under Mortgagor in connection with the transaction herein contemplated' and

(p) Mortgagor shall at any time or from time to time, upon the written request of Mortgagee, execute, and, if required, record (and pay all fees, taxes or other expenses relating thereto) all such further documents and do all such other acts and things as Mortgagee may reasonably request to effectuate the transaction herein contemplated.

4. Imposition. Mortgagor shall, subject to the provisions of this Mortgage, pay all Impositions prior to delinquency and in default thereof Mortgagee may, at its option, pay the same, unless Mortgagor is contesting such Impositions in good faith and has provided to Mortgagee a bond or other acceptable collateral (determined in Mortgagee's sole discretion) in an amount necessary to satisfy such Imposition. Any sums paid by Mortgagee on account of Impositions shall bear interest at the Default Rate.

5. Maintenance of Mortgaged Premises; Changes and Alterations.

(a) Mortgagor shall maintain or cause to be maintained the Mortgaged Premises in good repair, working order, and condition and make or cause to be made, when necessary, all repairs, renewals, and replacements, structural, non-structural, exterior, interior, ordinary and extraordinary. Mortgagor shall refrain from and shall not permit the commission of waste in or about the Mortgaged Premises and shall not remove, demolish, alter, change or add to the structural character of any improvement at any time erected on the Mortgaged Premises unless (i) with the prior written consent of Mortgagee; (ii) such removal, demolition, alteration, change or addition will not adversely affect the value of the Mortgaged Premises by more than \$100,000.00; or (iii) otherwise specifically provided herein.

(b) Mortgagor may, in its discretion and without the prior written consent of Mortgagee, any time and from time to time, remove and dispose of any Personalty, now or hereafter constituting part of the Mortgaged Premises which becomes inefficient, obsolete, worn out, unfit for use or no longer useful in the operation of the Mortgaged Premises or the business conducted thereon, if any, provided Mortgagor promptly replaces such Personalty with equal or better replacements (if still reasonably necessary or desirable for the operation of the Mortgaged Premises), with title to such replacements subject only to the Permitted Encumbrances.

6. Insurance.

(a) Mortgagor shall maintain the following insurance coverage with respect to the Mortgaged Premises:

(i) Comprehensive general liability insurance against any and all claims (including all costs and expenses of defending the same) for bodily injury or death and for property damage occurring upon, in or about the Mortgaged Premises and the adjoining streets or passageways in amounts not less than the respective amounts which Mortgagee shall from time to time reasonably require, having regard to the circumstances and usual practice at the time of prudent owners of comparable properties in the area

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in which the Mortgaged Premises are located, but in no event in an amount less than \$2,000,000.00 relative to the Mortgaged Premises;

- (ii) Flood insurance if the Mortgaged Premises are located in a flood hazard area.
- (iii) Such other insurance as is customarily purchased in the area for similar types of business, in such amounts and against such insurable risks as from time to time may reasonably be required by Mortgagee.

(b) Any insurance purchased by Mortgagor relating to the Mortgaged Premises, whether or not required under this Mortgage, shall be for the benefit of Mortgagee and Mortgagor, as their interests may appear, and shall be subject to the provisions of this Mortgage.

(c) If Mortgagor fails to keep the Mortgaged Premises insured in accordance with the requirements of the Loan Documents, Mortgagee shall have the right, at its option, to provide for such insurance and pay the premiums thereof, and any amounts paid thereon by Mortgagee shall bear interest at the Default Rate from the date of payment.

(d) All policies of insurance required by the Loan Documents shall be in forms and with companies reasonably satisfactory to Mortgagee, with standard mortgage clauses attached to or incorporated in all policies in favor of Mortgagee or Mortgagee shall be named as additional insured where appropriate, including a provision requiring that coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to Mortgagee. All such insurance proceeds, except proceeds from general liability insurance, shall be applied in accordance with Paragraph 7 below, and any amounts not so applied shall be paid to Mortgagor.

(e) Mortgagor shall deliver to Mortgagee the originals of all insurance policies or certificates of coverage under blanket policies, including renewal or replacement policies, and in the case of insurance about to expire shall deliver renewal or replacement policies as to the issuance thereof or certificates in the case of blanket policies not less than thirty (30) days prior to their respective dates of expiration.

(f) Notwithstanding any damage, loss or casualty to the Mortgaged Premises and in any event, Mortgagor shall continue to pay the principal and interest on the Notes.

(g) Wherever provision is made in the Mortgage for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of the Mortgagee shall continue in the Mortgagee as judgment creditor or mortgagee until confirmation of sale.

7. Damage or Destruction. In the event that the Mortgaged Premises is improved while this Mortgage secures the Mortgaged Premises:

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(a) In case of any damage to or destruction of the Mortgaged Premises or any part thereof from any cause whatsoever, other than a Taking (as defined in Paragraph 15), Mortgagor shall promptly give written notice thereof to Mortgagee, unless such damage or destruction involved less than \$10,000.00. In any event, but subject to the provision of Paragraph 7(d) hereof, Mortgagor shall restore, repair, replace, or rebuild the same or cause the same to be restored, repaired, replaced or rebuilt to substantially the same value, condition and character as existed immediately prior to such damage or destruction or with such changes, alterations and additions as may be made at Mortgagor's election pursuant to Paragraph 5. Such restoration, repair, replacement or rebuilding (herein collectively called "Restoration") shall be commenced promptly and completed with diligence by Mortgagor, subject only to delays beyond the control of Mortgagor.

(b) Subject to Paragraph 7(d) hereof, all net insurance proceeds received by Mortgagee pursuant to Paragraph 7 shall be made available to Mortgagor for the Restoration required hereby in the event of damage or destruction on account of which such insurance proceeds are paid. If at any time the net insurance proceeds which are payable to Mortgagor in accordance with the terms of this Mortgage shall be insufficient to pay the entire cost of the Restoration, Mortgagor shall immediately deposit the deficiency with Mortgagee. In such an event, Mortgagee shall make all payments from Mortgagor's own funds to the contractor making such Restoration until the amount of said deficiency has been satisfied; thereafter, Mortgagee shall make subsequent payments from the insurance proceeds to Mortgagor or to the contractor, whichever is appropriate. All payments hereunder shall be made only upon a certificate or certificates of a supervising architect appointed by Mortgagor and reasonably satisfactory to Mortgagee that payments, to the extent approved by such supervising architect, are due to such contractor for the Restoration, that the Mortgaged Premises are free of all liens of record for work labor or materials, and that the work conforms to the legal requirements therefor.

(c) Upon completion of the Restoration, the excess net insurance proceeds, if any, shall be paid to Mortgagor.

(d) If an Event of Default shall occur, or if in Mortgagee's reasonable estimation the Restoration shall not be completed prior to the maturity of the Notes, then, upon thirty (30) days' notice from Mortgagee to Mortgagor, all insurance proceeds received by Mortgagee may be retained by Mortgagee and applied in payment of the mortgage indebtedness and to any excess repaid to or for the account of Mortgagor.

8. Indemnification. Mortgagor agrees to indemnify and hold Mortgagee harmless from any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments, awards, decrees, costs and expenses (including reasonable attorney's fees), arising directly or indirectly, in whole or in part, out of the acts and omissions whether negligent, willful or otherwise, of Mortgagor, or any of its officers, directors, agents, subagents, or employees, in connection with this Mortgage or the other Loan Documents or as a result of: (i) ownership of the Mortgaged Premises or any interest therein or receipt of any rent or other sum therefrom; (ii) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Premises or any part thereof or on the adjoining sidewalks, curbs, vaults and vault space, if any, adjacent parking areas, streets or ways; (iii) any use, non-use or condition of the Mortgaged Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault



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space, if any, the adjacent parking areas, streets or ways; (iv) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; (v) the performance of any labor or services or the furnishing of any materials or other property with respect to the Mortgaged Premises or any part thereof or (vi) Mortgagee being the holder of the Notes or Mortgagee under the Mortgage or the exercise of any of Mortgagee's rights under the Loan Documents; except such claim arising out of Mortgagee's negligence or willful misconduct. Any amounts payable to Mortgagee under this Paragraph which are not paid within ten (10) days after written demand therefor by Mortgagee shall bear interest at the Default Rate. The obligations of Mortgagor under this Paragraph shall survive any termination or satisfaction of this Mortgage.

9. Prohibited Transfer; Due on Sale. Mortgagor shall not create, effect, contract for, agree to, consent to, suffer, or permit any conveyance, sale, lease, assignment, transfer, grant of security interest, or other encumbrance or alienation of any interest in the following properties, rights or interests without the prior written consent of Mortgagee ("Prohibited Transfer"):

(a) the Mortgaged Premises or any part thereof or interest therein, excepting only sales or other dispositions of Personalty pursuant to Paragraph 5 herein and sales of lots pursuant to Paragraph 26 herein;

(b) any membership or ownership units in a limited liability company that is Mortgagor or in any limited liability company which is a beneficiary of Mortgagor or any change in the management committee or manager of such limited liability company, notwithstanding the foregoing prohibition, the membership or ownership units in Mortgagor may be sold or otherwise transferred so long as: (i) MAC Development Corporation remains the manager of Mortgagor, and (ii) a majority of the outstanding shares of MAC Development Corporation are owned, in the aggregate, by Richard and Jane McCaffrey;

in each case whether any such Prohibited Transfer is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this Paragraph 9 shall not apply (i) to this Mortgage, (ii) to the lien of current taxes and assessments not in default, and (iii) unless there exists an Event of Default, to any lien on the Mortgaged Premises in favor of a Creditor (as defined in the Subordination Agreement); provided that such Creditor delivers a Subordination Agreement executed in favor of Mortgagee; and provided further that the total aggregate principal amount secured by such liens does not exceed \$700,000.00 (a "Permitted Lien").

10. Priority of Lien; After-Acquired Property.

(a) Except for a Permitted Lien described in Paragraph 9 and subject to the Permitted Contests granted under Paragraph 27, Mortgagor will keep and maintain the Mortgaged Premises free from all liens for moneys due and payable to persons supplying labor for and providing materials used in the construction, modification, repair or replacement of the Mortgaged Premises.

(b) In no event shall Mortgagor do or permit to be done, or permit to do or permit the omission of any act or thing the doing or omission of which would impair the lien of

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this Mortgage. Mortgagor shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction or agreement affecting or changing the uses which may be made of the Mortgaged Premises or any part thereof without the express written consent of Mortgagee, which shall not be unreasonably withheld or delayed. It is the desire of the parties (unless a contrary interest is manifested by Mortgagee in a duly recorded document) that the lien of this Mortgage shall not merge in fee simple title to the Mortgaged Premises regardless if Mortgagee shall acquire any additional or other interests in or to the Mortgaged Premises or ownership thereof.

11. Mechanics' Liens and Contest Thereof. Mortgagor will not suffer or permit any mechanics' lien claims to be filed or otherwise asserted against the Mortgaged Premises or any funds due any contractor and will immediately discharge the same in case of the filing of any claims for lien or proceedings for the enforcement thereof.

12. Settlement of Mechanics' Lien Claims. If Mortgagor shall fail promptly either (1) to discharge, or (2) to contest claims asserted in the manner provided in Paragraph 27 or having commenced to contest the same, shall fail to prosecute such contest with diligence, or upon adverse conclusion of any such contest, to cause any judgment or decree to be satisfied and lien to be released, then and in any such event Mortgagee may, at its election (but shall not be required to), procure the release and discharge of any such claim and any judgment or decree thereon and, further, may in its sole discretion effect any settlement or compromise of the same, or may furnish such security or indemnity to the Title Company and any amount so expended by Mortgagee, including premiums paid or security furnished in connection with the issuance of any surety company bonds, shall be deemed to constitute additional indebtedness secured hereby which shall bear interest at the Default Rate until paid. In settling, compromising or discharging any claims for lien, Mortgagee shall not be required to inquire into the validity or amount of any such claim.

13. Proceedings. If any proceedings are filed or are threatened to be filed seeking to (a) enjoin or otherwise prevent or declare invalid or unlawful the construction, occupancy, maintenance or operation of the Mortgaged Premises or any portion thereof; (b) adversely affect the validity or priority of the liens and security interest granted Mortgagee hereby; or (c) materially adversely affect the financial condition of Mortgagor, then Mortgagor will notify Mortgagee of such proceedings and within five (5) business days following Mortgagor's notice of such proceedings, and Mortgagor will cause such proceedings to be contested in good faith, and in the event of any adverse finding or decision, prosecute all allowable appeals therefrom. Mortgagor will, without limiting the generality of the foregoing, resist the entry or seek the stay of any temporary or permanent injunction that may be entered, and use its best efforts to bring about a favorable and speedy disposition of all such proceedings.

14. Restrictive Covenants/Recording. Mortgagor will comply with all restrictive covenants affecting the Mortgaged Premises. Mortgagor will not record or permit to be recorded any document, instrument, agreement or other writing against the Mortgaged Premises without the prior written consent of Mortgagee which shall not be unreasonably withheld or delayed.

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## 15. Condemnation.

(a) The term "Taking" as used herein shall mean a taking of all or part of the Mortgaged Premises under the power of condemnation of eminent domain. Promptly upon the receipt by Mortgagor of notice of the institution of any proceeding for the Taking of the Mortgaged Premises or any part thereof, Mortgagor shall give written notice thereof to Mortgagee and Mortgagee may, at its option, appear in any such proceeding. Mortgagor will promptly give to Mortgagee copies of all notices, pleadings, awards, determinations and other papers received by Mortgagor in any such proceeding. Mortgagor shall not adjust or compromise any claim for award or other proceeds of Taking without having first given at least twenty-five (25) days' written notice to Mortgagee of the proposed basis of adjustment or compromise and without first having received the written consent thereto of Mortgagee. Any award of other proceeds of Taking, after allowance for expenses incurred in connection therewith, are herein referred to as "Condemnation Proceeds".

(b) In the event of Taking of all or substantially all of the Mortgaged Premises, or Taking of less than all or substantially all of the Mortgaged Premises and the Mortgaged Premises are not susceptible to restoration, the Condemnation Proceeds shall be paid to Mortgagee and applied to payment of the mortgage indebtedness.

(c) If an Event of Default shall occur, or if in Mortgagee's reasonable estimation Restoration of the Mortgaged Premises shall not be completed prior to the maturity of the Mortgage Note, any Condemnation Proceeds shall be retained by Mortgagee and, at its option, applied in payment of the mortgage indebtedness.

16. Right to Inspect. After an occurrence of an Event of Default, Mortgagee, its agents and representatives, may at all reasonable times upon reasonable notice during normal business hours, make such inspections of the Mortgaged Premises as Mortgagee may deem necessary or desirable.

17. Events of Default. If the occurrence of any one or more of the following events ("Events of Default") shall occur, to wit:

(a) failure of Mortgagor to make payment on or before five (5) days after the date any payment of principal or interest is due under the Mortgage Note and/or the Revolving Note;

(b) subject to Paragraph 27 herein, if Mortgagor fails to make prompt payment of any Impositions;

(c) failure of Mortgagor to perform or observe, within thirty (30) days after written notice from Mortgagee to Mortgagor, any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor, under this Mortgage, other than those described in this Paragraph 17;

(d) failure of Mortgagor to perform or observe, after the applicable notice and cure period, if any, any condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under any other Loan Document or the occurrence of an

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“Event of Default” (as defined in the other Loan Documents) under any of the other Loan Documents;

(e) any representation, warranty or other information made or furnished to Mortgagee shall prove to have been false or incorrect in any material respect when made;

(f) if Mortgagor shall make a general assignment for the benefit of creditors, or shall state in writing or by public announcement its, their or his inability to pay its, their or his debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt, or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition against it, them or him in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Mortgagor or any material portion of their assets;

(g) if, within ninety (90) days after the commencement of any proceeding against Mortgagor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment of any trustee, receiver or liquidator of Mortgagor or any material portion of its, their or his assets, such appointment shall not have been vacated;

(h) entry against Mortgagor of any judgment which in excess of \$400,000.00 which is not satisfied within twenty (20) days of its entry;

(i) dissolution, merger or consolidation of Mortgagor or sale, transfer, lease or other disposition of substantially all of the assets of Mortgagor;

(j) the making of any levy, seizure, or attachment upon the Mortgaged Premises;

(k) failure of Mortgagor to fully comply with the requirements of any governmental agency or authority within sixty (60) days after notice of such requirements, if, in the reasonable exercise of Mortgagee’s judgment such failure to comply will materially affect Mortgagor’s ability to repay the Indebtedness;

(l) the occurrence of a Prohibited Transfer;

(m) if Mortgagor is enjoined, restrained or in any way prevented by court order from performing any of their obligations under this Mortgage or under the other Loan Documents; or

then, at any time thereafter, at the sole option of Mortgagee, without further notice to Mortgagor, the Principal Balance, and all accrued interest thereon together with any other sums due under the Loan Documents shall become immediately due and payable without presentment, demand, notice or protest of any kind, all of which are expressly waived by Mortgagor. After any such



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Event of Default, Mortgagee may institute, or cause to be instituted, proceedings for the realization of its rights under this Mortgage or the other Loan Documents.

## 18. Rights, Powers and Remedies of Mortgagee.

(a) If an Event of Default shall occur, Mortgagee may, at its election and to the extent permitted by law.

(i) Exercise any and all of Mortgagee's available remedies against Mortgagor, whether at law or in equity, including without limitation, the right to foreclose the lien of this Mortgage or any remedy available to Mortgagee under the other Loan Documents;

(ii) Make application for the appointment of a receiver for the Mortgaged Premises whether such receivership be incident to a proposed sale of the Mortgaged Premises or otherwise, and Mortgagor hereby consents to the appointment of such receiver and agrees not to oppose any such appointment. Further, Mortgagor agrees that Mortgagee shall be appointed the receiver without bond or surety of the Mortgaged Premises at Mortgagee's option.

(b) Mortgagee may, without order of Court or notice to or demand upon Mortgagor, take possession of the Mortgaged Premises. Should Court proceedings be instituted, Mortgagor hereby consents to the entry of an order by agreement to effect and carry out the provisions of this subparagraph. While in possession of the Mortgaged Premises, Mortgagee shall also have the following powers:

(i) To collect the rents and manage, lease, alter and repair the Mortgaged Premises, cancel or modify existing leases, obtain insurance and, in general, to the extent permitted by applicable law, have all powers and rights customarily incident to absolute ownership; and

(ii) To pay out of the rents so collected the management and repair charges, taxes, insurance, commissions, fees and all other expenses and, after creating reasonable reserves, apply the balance (if any) on account of the indebtedness secured hereby.

(iii) In addition to any provision of this Mortgage authorizing the Mortgagee to take or be placed in possession of the Mortgaged Premises, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Mortgaged Premises or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, power, immunities, and duties as provided for in Sections 5/15-1701 and 5/15-1703 of the Act.

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(c) Mortgagee may remain in possession of the Mortgaged Premises, in the event of a foreclosure, until the foreclosure sale and thereafter until the later of (i) delivery and recording of the deed which was issued pursuant to the foreclosure sale to the successful bidder at the foreclosure sale or (ii) expiration of all of Mortgagor's right, title and interest in the Mortgaged Premises including termination of all appeals from the order entered in the proceeding to foreclose this Mortgage. Mortgagee shall incur no liability for, and Mortgagor shall not assert any claim or recoupment as a result of any action taken while Mortgagee is in possession of the Mortgaged Premises, except only for Mortgagee's own gross negligence or willful misconduct. In the event no foreclosure proceedings are commenced, Mortgagee may remain in possession as long as there exists an Event of Default.

(d) In order to facilitate Mortgagee's exercise of the rights, powers and remedies granted herein or under the other Loan Documents effective after the occurrence of an Event of Default and while the Event of Default is continuing, Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney to act in its name and stead for the purpose of effectuating any rights, powers or remedies granted to Mortgagee under the Loan Documents and to execute and deliver all documents and instruments as Mortgagee shall deem necessary and appropriate to effectuate such rights, powers and remedies. Notwithstanding the foregoing, if requested by Mortgagee or any purchaser from Mortgagee, Mortgagor shall ratify and confirm such actions by executing and delivering to Mortgagee or such purchaser all appropriate documents and instruments as may be designated in such request. Further, Mortgagor agrees that Mortgagee may be a purchaser of the Mortgaged Premises or any part thereof or any interest therein at any foreclosure sale, and may apply upon the purchase price the indebtedness secured hereby.

(e) The proceeds of any sale of the Mortgaged Premises or part thereof or any interest therein and all amounts received by Mortgagee by reason of any holding, operation or management of the Mortgaged Premises or any part thereof together with any other moneys at the time held by Mortgagee, shall be applied in the following order to the extent that funds are so available:

- (i) First, to the payment of the costs and expenses of foreclosing this Mortgage and taking possession of the Mortgaged Premises and of holding, using, leasing, repairing, improving and selling the same, including, without limitation, (a) trustees' and receivers' fees, (b) court costs, (c) reasonable attorneys' and accountants' fees, (d) costs of advertisements, (e) all other costs and expenses incurred by Mortgagee in connection with Mortgagee exercising Mortgagee's rights hereunder, including without limitation, title commitments and policies, appraiser's fees and expenses of documentary and expert evidence and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute the foreclosure suit or to evidence to bidders at any foreclosure sale, and (f) the payment of any and all Impositions, liens, security interests or other rights, titles or interests equal or superior to the lien and security interest of this Mortgage (without in any way implying Mortgagee's prior consent to the creation thereof). All of the foregoing costs and expenses shall be secured by the lien of this

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Mortgage, shall be immediately due and payable, shall bear interest at the Default Rate from the date of disbursement by Mortgagee of such funds until paid in full and may be estimated by Mortgagee and may be expended after the entry of the foreclosure judgment.

- (ii) Second, to the payment of all amounts, other than the Principal Balance and accrued but unpaid interest, which may be due to Mortgagee under the Loan Documents together with interest thereon as provided therein;
- (iii) Third, to the payment of all accrued but unpaid interest due on the Notes;
- (iv) Fourth, to the payment of Principal Balance of i) Mortgage Note; and ii) the Revolving Note;
- (v) Fifth, to the extent funds are available therefor out of the sale proceeds or the rents and, to the extent known by Mortgagee to Mortgagor or any other party entitled thereto.

19. Right of Mortgagee to Make Advances to Cure Mortgagor's Defaults. In the event that Mortgagor shall fail to perform any of Mortgagor's obligations, covenants, promises or agreements contained herein or in the other Loan Documents, Mortgagee may (but shall not be required to) after five (5) days notice to Mortgagor, unless such notice could result in damage or loss in value to Mortgagee's security under the Loan Documents perform any of such covenants, obligations, promises and agreements, and any amounts expended by Mortgagee in so doing shall constitute additional Indebtedness hereunder and under the other Loan Documents, shall be immediately due and payable and shall bear interest at the Default Rate of the Revolving Note.

20. Change in Tax Laws. If, pursuant to the laws of the United States of America, or any state or municipality having jurisdiction over Mortgagee, Mortgagor or the Mortgaged Premises, any tax is imposed or becomes due in respect of the issuance of the Notes or the recording of this Mortgage, Mortgagor shall pay such tax in the manner required by such law. In the event that any law, statute, rule, regulation, order or court decree has the effect of deducting from the value of the Mortgaged Premises for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by the mortgages or the interest of Mortgagee in the Mortgaged Premises, or the manner of collection of taxes, so as to effect this Mortgage, the indebtedness hereby secured or Mortgagee, then, and in such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes, or reimburse Mortgagee thereof on demand and any amounts paid thereon by Mortgagee shall bear interest at the Default Rate set forth in the Revolving Note, unless Mortgagee determines, in Mortgagee's sole and exclusive judgment in good faith, that such payment or reimbursement by Mortgagor is unlawful; in which event the indebtedness hereby secured shall be due and payable within thirty (30) days after written demand by Mortgagee to Mortgagor.

21. Waivers. To the extent permitted under applicable law,

(a) Except as otherwise specifically provided for herein, Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments

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thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(b) Mortgagor acknowledges that the Mortgaged Premises does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act. Pursuant to Section 5/15-1601(b) of the Act, Mortgagor hereby waives any and all right of redemption.

(c) Mortgagor hereby waives any right to reinstate the Loan as provided in Section 5/15-1602 of the Act.

(d) Mortgagor hereby waives the benefit of all appraisal, valuation, stay, or extension laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Premises or any part thereof or any interest therein.

(e) Mortgagor hereby waives the benefit of any rights or benefits provided by the Homestead Exemption laws, if any, now or hereafter in force.

22. Remedies are Cumulative. Each right, power and remedy of Mortgagee now or hereafter existing at law or in equity shall be cumulative and concurrent and shall be in addition to every right, power and remedy provided for in the Loan Documents, and the exercise of any right, power or remedy shall not preclude the simultaneous or later exercise of any other right, power or remedy.

23. Compromise of Action. Any action, suit or proceeding brought by Mortgagee pursuant to the Loan Documents, or otherwise, and any claim made by Mortgagee under the Loan Documents, or otherwise, may be compromised, withdrawn or otherwise settled by Mortgagee without any notice to or approval of Mortgagor, except as otherwise provided in this Mortgage.

24. No Waiver. No delay or failure by Mortgagee to insist upon the strict performance of any term hereof or of the Notes or of any of the other Loan Documents or to exercise any right, power or remedy provided for herein or therein as a consequence of an Event of Default hereunder or thereunder, and no acceptance of any payment of the principal, interest or premium if any, on the Notes during the continuance of any such Event of Default, shall constitute a waiver of any such term, such Event of Default or such right, power or remedy. The exercise by Mortgagee of any right, power or remedy conferred upon it by this or any other Loan Document or by law or equity shall not preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No waiver of any Event of Default hereunder shall affect or alter this Mortgage, which shall continue in full force and effect with respect to other then existing or subsequent Events of Default.

25. Further Assurances. Mortgagor, at its expense, will execute, acknowledge and deliver such instruments and take such actions as Mortgagee from time to time may reasonably request to carry out the intent and purpose of this Mortgage and the other Loan Documents.



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## 26. Defeasance; Partial Releases.

(a) Full Release. Unless an Event of Default shall exist under any Loan Document, if Mortgagor shall pay in full the principal and interest due under the Mortgage Note, and Mortgagor shall have no further obligations under this Mortgage or the Mortgage Note, then Mortgagee, upon written request and at the expense of Mortgagor, shall execute and deliver to Mortgagor such instruments as shall be required to evidence of record the satisfaction of this Mortgage and the lien hereof. In the avoidance of doubt, upon release of Mortgagor hereunder, this Mortgage shall no longer secure the payment of the Revolving Note.

(b) Partial Release. If Mortgagee desires to sell a portion of the Mortgaged Premises consisting of a lot, Mortgagor may, in its reasonable discretion, release such lot from this Mortgage upon the satisfaction of all of the following conditions:

- (i) Mortgagor pays an amount equal to the Net Sales Price of such lot to Mortgagee as a prepayment on the Mortgage Note such amount not to exceed Seventy-Five Percent (75%) of the gross sales price of such lot;
- (ii) Mortgagor pays a release fee to Mortgagee of \$250.00 per lot; and
- (iii) After giving effect to the sale of such lot (such that it is no longer part of the Mortgaged Premises), Mortgagor maintains a LTV Ratio of Fifty-Five Percent (55%) or less.

Upon the satisfaction of the foregoing conditions, Mortgagee, upon written request and at the expense of Mortgagor, shall execute and deliver to Mortgagor such instruments as shall be required to evidence of record release of such lot from this Mortgage. For the avoidance of doubt, no releases under this Paragraph 26(b) will be permitted for portions of the Mortgaged Premises smaller than a lot.

27. Permitted Contests. Mortgagor may contest, at its own expense, by appropriate legal actions or proceedings conducted in good faith and with all due diligence, the amount, validity or enforceability in whole or in part of any Imposition or lien thereof or the validity of any instrument of record affecting the Mortgaged Premises or any part thereof, provided that:

(a) Such legal actions or proceedings are promptly commenced after Mortgagor receives notice of the lien or charge; and

(b) Mortgagor's legal counsel forwards to Mortgagee and Mortgagee's reasonably acceptable legal counsel, on a quarterly basis, detailed status reports describing the nature of the action or proceeding; the progress of such action or proceeding to date; describing pleadings filed and any settlement negotiations; evaluating the likelihood of an unfavorable outcome and estimating the amount or range of possible loss; and

(c) No adverse judgment, decree or other final adjudication be entered or rendered against Mortgagor; and

(d) Mortgagor sets aside on its books adequate reserves; and

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(e) Mortgagee would be in any danger of any additional material civil or criminal liability for failure to comply therewith; and

(f) The Title Company issues its endorsement insuring against the claim or lien in a manner satisfactory to Mortgagee or Mortgagor provides other security reasonably satisfactory to Mortgagee.

28. Amendment. This Mortgage cannot be amended, modified or terminated orally, but may only be amended, modified or terminated pursuant to written agreement executed by Mortgagor and Mortgagee.

29. Tax and Insurance Escrow.

(a) Mortgagee shall reserve the following amounts from the proceeds of the Loan to be paid on behalf of Mortgagor: (a) ONE HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$125,000.00) for payment of Interest due hereunder ("Interest Reserve"); and (b) ONE HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS (\$120,000) for payment of Mortgagor's real estate tax liabilities with respect to the Mortgaged Premises ("Tax Reserve"). Mortgagee agrees to advance appropriate amounts from the Interest Reserve and the Tax Reserve as such payments become due and payable. Mortgagor agrees to promptly forward to Mortgagee all notices received from any governmental authority regarding taxes due on the Mortgaged Premises. For the avoidance of doubt, interest shall begin to accrue on the amounts reserved by Mortgagee hereunder upon payment of such amounts by Mortgagee to the appropriate parties. Upon the sale of any lot pursuant to Section 26 or any other significant change in the status of the Loan, Lender may, in its reasonable discretion, release a portion of the Tax Reserve or Interest Reserve so as to accurately reflect the need for such reserves hereunder; any release shall be distributed to Mortgagor as principal under the Mortgage Note.

(b) Upon the occurrence of an Event of Default, at Mortgagee's sole election, Mortgagor shall be required to (i) pay Mortgagee monthly, in addition to each monthly payment required under the Notes, an amount equal to 1/12th of the annual amount reasonably estimated by Mortgagee to be sufficient to enable Mortgagee to pay all Impositions for which Mortgagee has not already reserved under Paragraph 29(a), (ii) pay Mortgagee monthly 1/12th of the annual insurance premiums necessary to maintain the insurance policies required pursuant to Paragraph 6(a) hereof, (iii) pay Mortgagee the amount of all Impositions (for which Mortgagee has not already reserved under Paragraph 29(a)) accrued but not due as of the date that this Paragraph becomes operative, and (iv) pay Mortgagee such sums as may be necessary, from time to time, to make up any deficiency in the amount required to fully pay all annual Impositions (for which Mortgagee has not already reserved under Paragraph 29(a)) and insurance premiums.

(c) It is expressly understood that all amounts set forth in this Paragraph 29 shall be held by Mortgagee in an escrow account which does not bear interest.

30. Notices.

(a) Except as otherwise specifically permitted herein, all notices, requests and other communications to any party hereunder shall be in writing (including electronic

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transmission, facsimile transmission or similar writing) and shall be given to such party: (a) in the case of Mortgagor at its address or facsimile number set forth below, (b) in the case of Mortgagee, at its address or facsimile number set forth below, or (c) in the case of any party, at such other address or facsimile number as such party may hereafter specify for the purpose by notice to Mortgagor and Mortgagee in accordance with the provisions of this Paragraph 30. Each such notice, request or other communication shall be effective (i) if given by facsimile transmission, when transmitted to the facsimile number specified in this Paragraph and confirmation of receipt is received, (ii) if given by mail, 72 hours after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid, or (iii) if given by any other means, when delivered (or, in the case of electronic transmission, received) at the address specified in this Paragraph.

Mortgagor: Phoenix II, LLC  
 1930 N. Thoreau Drive  
 Schaumburg, IL 60173  
 Attn: Richard McCaffrey  
 Facsimile: 847-397-3304

Copy to: Stahl, Cowen & Crowley LLC  
 55 W. Monroe St., Suite 500  
 Chicago, Illinois 60603  
 Attn: Jeffrey Stahl  
 Facsimile: 312-641-6909

Mortgagee: Merchants and Manufacturers Bank  
 25140 W. Channon Dr.  
 Channahon, Illinois 60410  
 Attn: Steven Davis  
 Facsimile: 815-467-3843

Copy to: Wildman, Harrold, Allen & Dixon LLP  
 225 West Wacker Drive  
 Chicago, Illinois 60606-1229  
 Attn: David J. Fischer  
 Facsimile: 312-201-2555

(b) Mortgagor and Mortgagee may each change the address for service of notice upon it by a notice in writing to the other parties hereto.

31. Expense of Enforcement. When the indebtedness hereby secured shall become due whether by acceleration or otherwise, Mortgagee 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 all reasonable 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, guarantee policies, and similar data and

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reasonable assurances with respect to title as Mortgagee 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 Mortgaged Premises. The expenditures and expenses referenced above in this Paragraph 31 shall also be payable by Mortgagor to Mortgagee and shall bear interest at the Default Rate, when paid or incurred by Mortgagee in connection with (a) any proceeding, including probate and bankruptcy proceedings, to which Mortgagee shall be affected or be a party, either as plaintiff, claimant or defendants, 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 or intervention in any threatened suit or proceeding which might affect the Mortgaged Premises or the security hereof, whether or not actually commenced.

32. Cross Default Clause. Any default by Mortgagor (after the expiration of applicable notice and cure periods) in the performance or observance of any covenant, promise, condition or agreement hereof shall be deemed an Event of Default under each of the Loan Documents, entitling Mortgagee to exercise all or any remedies available to Mortgagee under the terms of any or all Loan Documents, and any default or Event of Default under any other Loan Document (after the expiration of applicable notice and cure periods) shall be deemed a default hereunder, entitling Mortgagee to exercise any or all remedies provided for herein.

33. Incorporation by Reference. The terms of the Loan Documents are incorporated herein and made a part hereof by reference.

34. Disclaimer by Mortgagee. Mortgagee shall not be liable to any party for services performed or obligations due in connection with this Loan, unless caused exclusively by Mortgagee in breach of the Loan Documents. Mortgagee shall not be liable for any debts or claims accruing in favor of any parties against Mortgagor or against the Mortgaged Premises. Mortgagor is not and shall not be an agent of Mortgagee for any purposes, and Mortgagee is not a venture partner with Mortgagor in any manner whatsoever. Approvals granted by Mortgagee for any matters covered under this Mortgage shall be narrowly construed to cover only the parties and facts identified in any written approval or if not in writing such approvals shall be solely for the benefit of Mortgagee.

35. Mortgagee Not a Joint Venturer. Notwithstanding anything to the contrary herein contained, Mortgagee, by making the Loan or by any action taken pursuant thereto, shall not be deemed a partner or joint venturer with Mortgagor, and Mortgagor hereby agrees to indemnify and hold Mortgagee harmless from any and all damages resulting from such a construction of the parties and their relationship. This Mortgage is made for the sole benefit of Mortgagor and Mortgagee, and no other person shall be deemed to have any privity of contract hereunder, nor any right to rely hereon to any extent or for any purpose whatsoever, nor shall any other person, have any right of action of any kind hereon or be deemed to be a third party beneficiary hereunder.

36. Security Agreement.



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(a) Mortgagor and Mortgagee agree that this Mortgage shall constitute a security agreement within the meaning of the Illinois Uniform Commercial Code (the "Code") with respect to (i) all sums at any time on deposit for the benefit of Mortgagee or held by Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the other Loan Documents and (ii) any Property, Fixtures and Personalty, which may not be deemed to be affixed to the Mortgaged Premises or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and that a security interest in and to the Property, Fixtures and Personalty is hereby granted to Mortgagee and the Property, Fixtures and Personalty and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all to secure payment of the Indebtedness. All of the provisions contained in this Mortgage pertain and apply to the Property, Fixtures and Personalty as fully and to the same extent as to any other property comprising the Mortgaged Premises.

(b) This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Property, Fixtures and Personalty and the goods described herein, which goods are or may become fixtures relating to the Mortgaged Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are hereinabove set forth. This Mortgage is to be filed for record with the Recorder of Deeds of the County or Counties where the Mortgaged Premises are located. Mortgagor is the record owner of the Mortgaged Premises.

37. Revolving Loan. Among other things, this Mortgage is given to secure a revolving credit loan pursuant to and in accordance with the Revolving Note and shall secure not only presently existing indebtedness under the Revolving Note but also future advances, whether such advances are obligations or to be made at the option of Mortgagee or otherwise, as are made within 20 years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no Indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all Indebtedness, including future advances, from the time of its recording in the Recorder's Office of the county in which the Mortgaged Premises are located. The total amount of Indebtedness may increase or decrease from time to time, but the total unpaid balance of the Indebtedness (including disbursements which Mortgagee may make under this Mortgage, the Revolving Note or any other document with respect thereto) at any one time outstanding shall not exceed a sum equal to Three Million Three Hundred Twenty-Five Thousand and No/100 Dollars (\$3,325,000.00). This Mortgage shall be valid and have priority to the extent of the Indebtedness over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Premises given priority by law.

### 38. Rents and Leases.

(a) Assignment of Rents and Leases. Mortgagor hereby pledges and assigns to Mortgagee, as further security for the payment of the Indebtedness, all of the Rents from the Mortgaged Premises, together with all leases and other agreements or documents evidencing such Rents now or hereafter in effect and any and all deposits held as security under such leases, agreements or documents; and Mortgagor shall, upon demand, deliver to Mortgagee a true copy of all such leases or other agreements or documents. Nothing contained in the foregoing sentence shall be construed to bind Mortgagee to the performance of any of the covenants,

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conditions or provisions contained in any such lease or other agreement or document or otherwise to impose any obligation on Mortgagee (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease or in any law of any applicable state in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Mortgage and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Mortgaged Premises), except that Mortgagee shall be accountable for any money actually received pursuant to this assignment. Mortgagor hereby further grants to Mortgagee the right, exercisable at Mortgagee's option, (a) to enter upon and take possession of the Mortgaged Premises for the purpose of collecting the Rents, (b) to dispossess by the usual summary proceedings any tenant defaulting in the payment of any Rents to Mortgagee, (c) to let the Mortgaged Premises, or any part thereof, and (d) to apply the Rents, after payment of all necessary charges and expenses, in payment of the Indebtedness then due or payable. Such assignment and grant shall continue in effect until the indebtedness is paid in full, the execution of this Mortgage constituting and evidencing the irrevocable consent of Mortgagor to the entry upon and taking possession of the Mortgaged Premises by Mortgagee pursuant to such grant, whether foreclosure has been instituted or not and with or without applying for a receiver. Although it is the intention of Mortgagor and Mortgagee that the assignment contained in this Paragraph 38 shall be a present assignment, it is expressly understood and agreed that, notwithstanding anything herein contained to the contrary, until the occurrence of an Event of Default under any of the Loan Documents or this Mortgage, Mortgagor shall be entitled to collect and receive the Rents and Mortgagee shall not exercise any of the rights and powers conferred upon it by this Paragraph 38. Mortgagor agrees to use the Rents in payment of taxes, assessments, water rates, sewer rents, carrying charges and other costs relating to the maintenance and operation of the Mortgaged Premises becoming due against the Mortgaged Premises and in payment of principal, interest and other amounts becoming due with respect to or under the Note secured by this Mortgage. At any time after the occurrence of an Event of Default under any of the Loan Documents or this Mortgage, such right of Mortgagor to collect and receive the Rents may be revoked by Mortgagee by giving notice in the manner provided in Paragraph 30 above.

(b) Lessee Attornment. 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 all or any part of the Mortgaged Premises made after the date of recording this Mortgage, if any, shall, at the option of Mortgagee, attorn to any person succeeding to the interest of Mortgagor as a result of such enforcement and shall recognize such successor in interest as landlord under such lease without change in the terms or other provisions thereof; provided, however, that the 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 prior consent of Mortgagee or said successor in interest, and shall execute and deliver an instrument or instruments confirming such attornment, and Mortgagor shall cause each such lease of all or any part of the Premises to contain a covenant on the lessee's part evidencing its agreement to such attornments.

39. CHOICE OF LAW. THE LOAN DOCUMENTS (OTHER THAN THOSE CONTAINING A CONTRARY EXPRESS CHOICE OF LAW PROVISION) SHALL BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (INCLUDING, WITHOUT LIMITATION, 735 ILCS SECTION 105/5-1 ET SEQ, BUT OTHERWISE

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WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS) OF THE STATE OF ILLINOIS.

40. CONSENT TO JURISDICTION. MORTGAGOR HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR ILLINOIS STATE COURT SITTING IN CHICAGO, ILLINOIS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS AND MORTGAGOR HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVE ANY OBJECTION THEY MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL LIMIT THE RIGHT OF MORTGAGEE TO BRING PROCEEDINGS AGAINST ANY MORTGAGOR IN THE COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY COUNTERCLAIMS, BY ANY MORTGAGOR AGAINST MORTGAGEE OR ANY AFFILIATE OF MORTGAGEE INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY LOAN DOCUMENT SHALL BE BROUGHT ONLY IN A COURT IN CHICAGO, ILLINOIS.

41. WAIVER OF JURY TRIAL. MORTGAGOR AND MORTGAGEE HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY LOAN DOCUMENT OR THE RELATIONSHIP ESTABLISHED THEREUNDER.

42. Miscellaneous.

(a) Upon request and after the occurrence of an Event of Default, Mortgagor or Mortgagee shall confirm in writing to the other, or its designee, the amount then due hereunder and under the Notes.

(b) It is agreed that any future advances made by Mortgagee to or for the benefit of Mortgagor from time to time under this Mortgage or the Loan Documents and whether or not such advances are obligatory or are made at the option of Mortgagee, or otherwise, made at any time from and after the date of this Mortgage, and all interest accruing thereon, shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Mortgage.

(c) Mortgagee has bound itself and does hereby bind itself to make advances pursuant to and subject to the terms of the Notes and the parties hereby acknowledge and intend that all such advances, including future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 5/15-1302(b)(1) of the Act. It is also specifically understood and agreed that all funds which are advanced by Mortgagee under this Mortgage or the Loan Documents or in the exercise of Mortgagee's judgment that the same are

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necessary or desirable to complete, operate, maintain or market the Mortgaged Premises or to protect Mortgagee's security under the Loan Documents shall because of economic necessity and compulsion be deemed advanced by Mortgagee under an obligation to do so regardless of the identity of the person or persons to whom such funds are furnished and shall be added to the indebtedness evidenced by the Notes and shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof.

(d) Should the proceeds of the Notes or any part thereof, or any amount paid out or advanced by Mortgagee hereunder or pursuant to any agreement executed by Mortgagor in connection with this Mortgage be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any mortgage, lien, charge or encumbrance upon the Mortgaged Premises or any part thereof, then as additional security hereunder, Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding mortgage liens, charges and indebtedness, however remote, regardless of whether said mortgages, liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

(e) If the time of payment of all indebtedness secured hereby or any part thereof be extended at any time or times, if the Notes are renewed, modified or replaced, or if any security for the Notes be released, Mortgagor and any other parties now or hereafter liable for payment of such indebtedness in whole or in part or any parties interested in the Mortgaged Premises shall be held to consent and take subject to such extensions, renewals, modifications, replacements and releases, and their liability and the lien hereof and the Loan Documents and the rights created hereby and thereby shall continue in full force, the right of recourse against all such parties being reserved by Mortgagee.

(f) The Loan proceeds are to be used for the refinancing of the Mortgaged Premises and other business purposes.

(g) This Mortgage shall be binding upon Mortgagor and its successors and assigns, and all persons claiming under or through Mortgagor or any such successor or assign, and shall inure to the benefit of and be enforceable by Mortgagee and its successors and assigns; notwithstanding the foregoing, Mortgagor shall not be permitted to assign its obligations under this Mortgage or any Loan Document without the prior written consent of Mortgagee.

(h) The various headings used in this Mortgage as headings for paragraphs or otherwise are for convenience only and shall not be used in interpreting the text of the paragraph in which they appear and shall not limit or otherwise affect the meanings thereof.

(i) If any provision in this Mortgage is held by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such provision of this Mortgage to be illegal, invalid, unlawful, void, voidable, or unenforceable as written, then such provision shall be given full force and effect to the fullest possible extent that it is legal, valid and enforceable that the remainder of this Mortgage shall be construed as if such illegal, invalid, unlawful, void, voidable or unenforceable provision was not contained therein, and that the



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rights, obligations and interest of Mortgagor and the holder hereof under the remainder of this Mortgage shall continue in full force and effect.

(j) If any action or proceeding shall be instituted to recover possession of the Mortgaged Premises or any part thereof or to accomplish any other purpose which would materially affect this Mortgage or the Mortgaged Premises, Mortgagor will immediately, upon service of notice thereof, deliver to Mortgagee a true copy of each petition, summons, complaint, notice of motion, order to show cause, and all other process, pleadings and papers however designated, served in any such action or proceeding.

(k) Regardless of their form, all words shall be deemed singular or plural and shall have such gender as required by the text. Whenever applicable, the term "mortgage" shall also mean "trust deed" or "deed of trust". If there is more than one Mortgagor of this Mortgage, the liability of the undersigned shall be joint and several.

(l) Mortgagor waives any right, if any, it now or in the future may have to remove any claim or dispute arising herefrom to the Courts of the United States of America.

*[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]*

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IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed as of the day and year first above written.

**PHOENIX II, LLC**, an Illinois limited liability company

**By:** MAC Development Corporation,  
an Illinois corporation

**Its:** Manager

By: Richard McCaffrey  
Name: Richard McCaffrey  
Title: President

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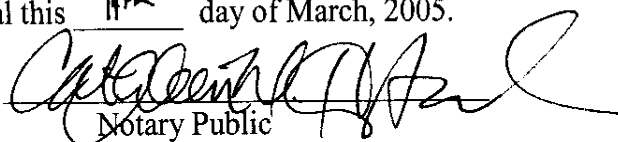
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STATE OF ILLINOIS

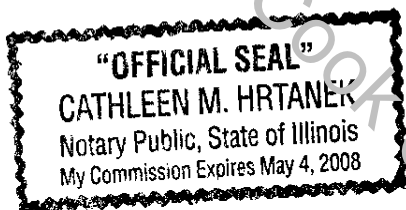
COUNTY OF COOK

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Richard McCaffrey, personally known to me to be the Manager of MAC Development Corporation, as Managing Partner of Phoenix II, LLC, an Illinois limited liability company, appeared before me this day in person and severally acknowledged that he signed and delivered this instrument as, as his free and voluntary act, and as the free and voluntary act and deed of the Company for the uses and purposes therein set forth.

Given under my hand and official seal this 11<sup>th</sup> day of March, 2005.

  
Notary Public

My Commission Expires:



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## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL 1:

LOT 1 IN THE RESUBDIVISION OF LOT 3 AND 4 IN PHOENIX LAKE BUSINESS PARK BEING A RESUBDIVISION OF PART OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 41 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 24, 2003 AS DOCUMENT NO. 0332810115, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

LOTS 5, 6, AND 7 IN PHOENIX LAKE BUSINESS PARK, BEING A RESUBDIVISION OF OUTLOTS "A", "B" AND "C" IN THE STREAMWOOD BUSINESS CENTRE SUBDIVISION PHASE 2, BEING A SUBDIVISION IN PART OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 41 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 19, 2001 AS DOCUMENT 0011204741 AND CERTIFICATE OF CORRECTION RECORDED MAY 15, 2002 AS DOCUMENT 0020555190, IN COOK COUNTY, ILLINOIS.

together with (i) any and all buildings and structures and improvements, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the property ("Property") legally described above or any part thereof, and all rights, titles and interest appurtenant thereto, together with all right, title and interest of Mortgagor in and to all Personalty (as defined in this Mortgage) and all goodwill, trademarks, tradenames, option rights, purchase contracts and agreements, books and records and general intangibles of Mortgagor relating to the Property and Mortgaged Premises and all accounts, accounts receivable, contract rights, choses in action, instruments, chattel paper and other rights of Mortgagor for payment of money relating to the Property and Mortgaged Premises and any other intangible property of Mortgagor related to the Property and Mortgaged Premises, including without limitation any and all rights of Mortgagor in, to or with respect to any and all accounts maintained with Mortgagee or any other party in which are held funds relating to the Impositions (as defined in this Mortgage), insurance premiums, or tenants' security deposits with respect to the Property and Mortgaged Premises and all of Mortgagor's right, title and interest in and to all of the rents, issues, revenues, royalties, income, avails, proceeds, profits and other benefits paid or payable by parties under any and all leases, subleases, licenses, concessions or other agreements (written or oral, now or hereafter in effect) which grant occupancy, a possessory interest in and to, or the right to use the Property and Mortgaged Premises or any part thereof or interest therein, and all rights, privileges, authority and benefits of Mortgagor or the landlord under such leases (but under no circumstances any liabilities, obligations or



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responsibilities thereunder) or otherwise generated by or derived from the Property and Mortgaged Premises and Mortgagor's rights to any and all documents, instruments, contracts or agreements pertaining to the ownership, use, occupancy, possession, development, design, construction, financing, operation, alteration, repair, marketing, sale, lease or enjoyment of the Property and Mortgaged Premises, including without limitation any contracts for labor or materials, purchase orders, service contracts, maintenance agreements, management contracts, lease agency agreements, sales agency agreements, marketing contracts, loan or financing commitments, and payment, performance or surety bonds, and all rights, privileges, authority and benefits thereunder (but under no circumstances any liabilities, obligations or responsibilities thereunder); (ii) any and all rights, privileges, authority and benefits under any option, articles of agreement for deed, installment contract or other contract or agreement pursuant to which Mortgagor is granted any possessory, legal, equitable, beneficial or other interest in the Property and Mortgaged Premises; (iii) any and all rights privileges, tenements, hereditaments, rights of way, rights of access, riparian rights, mineral rights, homestead rights, easements, appendages and appurtenances in any way appertaining thereto, and all right, title and interest of Mortgagor in and to any streets, ways, alleys, waterways, strips or gores of land adjoining the Property or any part thereof; (iv) any and all betterments, additions, appurtenances, substitutions, replacements and after acquired title or interests in the Property and Mortgaged Premises and all reversions and remainders therein; and (v) any and all of Mortgagor's right, title and interest in and to any judgment, award, remuneration, settlement, compensation, recovery or proceeds heretofore made or hereafter to be made by any governmental authority or insurance company to the present or any subsequent owner of the Property and Mortgaged Premises, including those for any condemnation of or casualty to the Property and Mortgaged Premises, or for any vacation of, or change of grade in, any streets serving or affecting the Property and Mortgaged Premises.

PIN# 06-25-205-013-0000  
06-25-205-014-0000  
06-25-205-015-0000  
06-25-209-003-0000  
06-25-209-004-0000

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## EXHIBIT B

### PERMITTED ENCUMBRANCES

See attached.

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A handwritten signature in black ink, consisting of several large, stylized, overlapping loops and curves.A second handwritten signature in black ink, similar in style to the first, with large, fluid, overlapping strokes.

SPECIAL EXCEPTIONS:

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AC 1.

1. TAXES FOR THE YEAR(S) 2004 AND 2005  
2005 TAXES ARE NOT YET DUE OR PAYABLE.

1A. NOTE: 2004 FIRST INSTALLMENT WAS DUE MARCH 1, 2005  
NOTE: 2004 FINAL INSTALLMENT NOT DUE OR PAYABLE.

PERM TAX#	PCL	YEAR	1ST INST	STAT	2ND INST
06-25-205-013-0000	1 OF 5	2004	\$6,447.48	PAID	NOT DUE
THIS TAX NUMBER AFFECTS PART OF PARCEL IN QUESTION. LOT 5 PARCEL 2					
06-25-205-014-0000	2 OF 5	2004	\$6,139.17	PAID	NOT DUE
THIS TAX NUMBER AFFECTS PART OF PARCEL IN QUESTION. LOT 6 PARCEL 2					
06-25-205-015-0000	3 OF 5	2004	\$6,202.13	PAID	NOT DUE
THIS TAX NUMBER AFFECTS PART OF PARCEL IN QUESTION. LOT 7 PARCEL 2					
06-25-209-003-0000	4 OF 5	2003	NO AMOUNT DUE	NOT DUE	
THIS TAX NUMBER PART OF PARCEL IN QUESTION AND OTHER PROPERTY. PART PARCEL 1					
06-25-209-004-0000	5 OF 5	2003	NO AMOUNT DUE	NOT DUE	
THIS TAX NUMBER AFFECTS PART OF PARCEL IN QUESTION. PART PARCEL 1					

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C 2. THE LAND LIES WITHIN THE BOUNDARIES OF A SPECIAL SERVICE AREA AS DISCLOSED BY ORDINANCE RECORDED AS DOCUMENT 0021038380, AND IS SUBJECT TO ADDITIONAL TAXES UNDER THE TERMS OF SAID ORDINANCE AND SUBSEQUENT RELATED ORDINANCES.

H 3. NOTICE OF REQUIREMENTS FOR STORM WATER DETENTION RECORDED AUGUST 21, 1985 AS DOCUMENT 85156501.

I 4. PUBLIC UTILITY EASEMENTS AS SHOWN ON PLAN OF STREAMWOOD BUSINESS CENTRE SUBDIVISION PHASE 2 RECORDED JUNE 16, 1994 AS DOCUMENT 94530458 AND CERTIFICATE OF CORRECTION RECORDED JULY 1, 1994 AS DOCUMENT 94579085.

(AFFECTS THE NORTHERLY 15 FEET AND THE EAST 30 FEET OF PARCEL 1 AND ALSO

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AFFECTS THE NORTHERLY 15 FEET OF LOT 5 OF PARCEL 2)

- J 5. WETLAND CONSERVATION, STORM WATER RETENTION AND DETENTION EASEMENT FOR THE BENEFIT OF THE VILLAGE OF STREAMWOOD AS SHOWN ON PLAT OF STREAMWOOD BUSINESS CENTRE SUBDIVISION PHASE 2 RECORDED JUNE 16, 1994 AS DOCUMENT 94530458 AND CERTIFICATE OF CORRECTION RECORDED JULY 1, 1994 AS DOCUMENT 94579085.
- (AFFECTS PARCEL 2)
- L 6. RESERVATION OF EASEMENT FOR OVERHEAD, UNDERGROUND AND SURFACE, PUBLIC UTILITIES AND DRAINAGE AND WETLANDS TO THE VILLAGE OF STREAMWOOD, NORTHERN ILLINOIS GAS CO., CABLE TV, COMMONWEALTH EDISON CO., AND ILLINOIS BELL TELEPHONE COMPANY, THEIR SUCCESSORS AND ASSIGNS FOR THE INSTALLATION, MAINTENANCE, RELOCATION, RENEWAL AND REMOVAL OF PUBLIC UTILITIES, DRAINAGE FACILITIES AND RELATED APPURTENANCES, IN, OVER, UNDER, ACROSS, ALONG AND UPON THE LAND AS SHOWN ON PLAT OF STREAMWOOD BUSINESS CENTRE SUBDIVISION PHASE 2 RECORDED JUNE 16, 1994 AS DOCUMENT 94530458 AND CERTIFICATE OF CORRECTION RECORDED JULY 1, 1994 AS DOCUMENT 94579085.
- (AFFECTS THE NORTHERLY 15 FEET AND THE EAST 30 FEET OF PARCEL 1 AND ALSO AFFECTS THE NORTHERLY 15 FEET OF LOT 5 OF PARCEL 2)
- M 7. TERMS AND PROVISIONS OF THE RESTRICTIVE COVENANT RECORDED JULY 1, 1994 AS DOCUMENT 94579086 BY PARKWAY BANK AND TRUST COMPANY AS TRUSTEE UNDER TRUST AGREEMENT DATED FEBRUARY 13, 1987 AND KNOWN AS TRUST NUMBER 8167 COVENANTING AND AGREEING THAT IT WILL NOT CONSTRUCT, LEASE, OR OPERATE ON THE PROPERTY DESCRIBED HEREIN A MOTION PICTURE THEATRE COMPLEX, AND IT WILL NOT USE THE PROPERTY DESCRIBED HEREIN FOR THE COMMERCIAL EXHIBITION OF MOTION PICTURES; SAID COVENANTS SHALL RUN WITH THE LAND SUBJECT TO PROVISIONS CONTAINED HEREIN.
- N 8. BUILDING SETBACK LINES AS SHOWN ON THE PLAT OF PHOENIX LAKE BUSINESS PARK RECORDED AS DOCUMENT 0011204741 AS FOLLOWS:
- THE WEST 50 FEET OF LOT 3;  
 THE WEST 50 FEET AND THE NORTH 50 FEET OF LOT 4;  
 THE NORTH 50 FEET AND THE EAST 50 FEET OF LOT 5;  
 THE EAST 50 FEET OF LOTS 6 AND 7.
- O 9. EASEMENT FOR PUBLIC UTILITIES AS SHOWN ON THE PLAT OF PHOENIX LAKE BUSINESS PARK, AFORESAID, AS FOLLOWS:
- THE WEST 10 FEET OF LOTS 3 AND 4;  
 THE EAST 10 FEET, THE NORTH 25 FEET, THE WEST 15 FEET AND A TRIANGULAR PORTION IN THE NORTHWEST CORNER OF LOT 5;  
 THE EAST 10 FEET AND THE WEST 15 FEET OF LOT 6;  
 THE EAST 10 FEET, THE WEST 15 FEET AND THE SOUTH 15 FEET OF LOT 7;



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- P 10. EXISTING EASEMENTS FOR PUBLIC UTILITIES AS SHOWN ON THE PLAT OF PHOENIX LAKE BUSINESS PARK, AFORESAID, OVER THE FOLLOWING:
- THE EAST 30 FEET OF LOT 3;  
THE EAST 30 FEET AND THE NORTH 15 FEET OF LOT 4;  
THE NORTH 15 FEET OF LOT 5;
- Q 11. EASEMENT IN FAVOR OF THE COMMONWEALTH EDISON COMPANY, AT&T CABLE, CABLE COMPANY, NOCOR AND THE ILLINOIS BELL TELEPHONE COMPANY, AND ITS/THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, TO INSTALL, OPERATE AND MAINTAIN ALL EQUIPMENT NECESSARY FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY, TOGETHER WITH THE RIGHT OF ACCESS TO SAID EQUIPMENT, AND THE PROVISIONS RELATING THERETO CONTAINED IN THE PLAT RECORDED/FILED AS DOCUMENT NO. 0011204741 AFFECTING THOSE PORTIONS OF THE LAND SHOWN WITHIN THE DOTTED LINES AND MARKED "P.U.E." PUBLIC UTILITY EASMENT, ON SAID PLAT.
- R 12. EASEMENT IN FAVOR OF THE VILLAGE OF STREAMWOOD, ANY LICENSEE OR A HOLDER OF ANY FRANCHISE FROM THE VILLAGE AND THEIR SUCCESSORS AND ASSIGNS, TO CONSTRUCT, MAINTAIN AND RENEW THEIR POLES, WIRES, CABLES, PIPES, CONDUITS AND NECESSARY FIXTURES FOR THE TRANSMISSION AND DISTRIBUTION OF ELECTRICITY, WATER, SEWER, TELEPHONE, CABLE TELEVISION AND OTHER MUNICIPAL SERVICES, TOGETHER WITH THE RIGHT OF ACCESS TO SAME FOR MAINTENANCE THEREOF, AS RESERVED IN THE ORDINANCE VACATING UNIMPROVED EAST AVENUE BETWEEN WOODLAND HEIGHTS BOULEVARD AND YORKSHIRE DRIVE, A COPY OF WHICH WAS RECORDED DECEMBER 7, 2001 AS DOCUMENT 0011160111.
- S 13. A CERTIFICATE OF CORRECTION CORRECTING CERTAIN LOT DIMENSIONS AS SHOWN ON PHOENIX LAKE BUSINESS PARK, WAS RECORDED MAY 15, 2002 AS DOCUMENT 0020555190.
- T 14. COVENANTS AND RESTRICTIONS (BUT OMITTING ANY SUCH COVENANT OR RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS OR NATIONAL ORIGIN UNLESS AND ONLY TO THE EXTENT THAT SAID COVENANT A) IS EXEMPT UNDER CHAPTER 42, SECTION 3607 OF THE UNITED STATES CODE OR (B) RELATES TO HANDICAP BUT DOES NOT DISCRIMINATE AGAINST HANDICAPPED PERSONS), RELATING TO ZONING; APPROVAL OF PLANS; IMPROVEMENT GUIDELINES; UNDERGROUND UTILITIES; LOT LANDSCAPE PLAN; LOADING DOCKS; CONSTRUCTION PERIOD; MAINTENANCE; SIGNS; SHIPPING AND RECEIVING BY TRUCK; OUTSIDE STORAGE; SPECIAL OPERATIONS OR USES; ABANDONMENT; WETLAND AND WETLAND BUFFER ZONES; DAMAGE TO WETLANDS AND WETLAND BUFFER ZONES; USE; CONFORMITY WITH GOVERNMENTAL REGULATIONS; PHOENIX LAKE BUSINESS PARK ASSOCIATION; ASSOCIATION ASSESSMENTS AND MISCELLANEOUS PROVISIONS CONTAINED IN THE DOCUMENT RECORDED MAY 6, 2002 AS DOCUMENT NO. 0020511817 WHICH DOES NOT CONTAIN A REVERSIONARY OR FORFEITURE CLAUSE.

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## EXHIBIT C

### FORM OF SUBORDINATION AGREEMENT

See attached.

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Execution Copy

## SUBORDINATION AGREEMENT

SUBORDINATION AGREEMENT made this \_\_\_\_ day of February, 2005, between Merchants and Manufacturers Bank, an Illinois bank with a usual place of business at \_\_\_\_\_ (the "**Bank**"), and \_\_\_\_\_ (the "**Creditor**").

WHEREAS, Bank has made certain loan and credit accommodations to Phoenix II LLC (the "**Borrower**"), secured by first priority security interests and liens on all of Borrower's property and assets; and

WHEREAS, Borrower has requested that the Creditor enter into a transaction with Borrower to provide for, among other things, loan to Borrower in the principal amount of \$\_\_\_\_\_, which loan shall be evidenced by that certain Non Negotiable Promissory Note (the "**Creditor Note**", together with the Creditor Agreement and the documents listed on Schedule "A" attached hereto are hereinafter called the "**Creditor Documents**") (such obligations evidenced thereby, the "**Creditor Indebtedness**"); and

WHEREAS, the Creditor Indebtedness is secured by a second priority security interest and lien in certain of the Borrower's assets; and

WHEREAS, the Creditor has reviewed the Bank Documents (hereinafter defined) being entered into between Borrower and Bank and is aware of the terms and conditions of the Bank Documents, including conditions giving rise to an Event of Default thereunder; and

WHEREAS, Bank requires that Creditor subordinate, and Creditor has agreed to subordinate, the repayment of the Creditor Indebtedness and its rights and remedies relating thereto under the Creditor Documents to the payment of all indebtedness of Borrower to Bank and to the Bank's rights and remedies related thereto; and

WHEREAS, Bank requires the Creditor to subordinate, and Creditor has agreed to subordinate, the Creditor's security interest and lien in Borrower's property and assets to the security interest and lien of Bank in all of the Borrower's property and assets and to the Bank's rights and remedies as a secured party related thereto.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Bank and Creditor agree as follows:

1. All understandings, agreements, representations and warranties contained herein are solely for the benefit of the parties hereto and there are no other parties (including, without limitation, Borrower) who are intended to be benefitted in any way by this Agreement.

2. The Creditor represents and warrants that on the date hereof the total principal amount of indebtedness outstanding from Borrower to Creditor is \$\_\_\_\_\_ Dollars and all of such amount is evidenced by the Creditor Documents. There are no other

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agreements or instruments between Creditor and Borrower relating to the payment of any indebtedness or liabilities from Borrower to Creditor.

3. Anything in the Creditor Note notwithstanding, the Creditor agrees that the payment of the Creditor Note and all other Creditor Indebtedness is and shall be expressly subordinate and junior in right of payment to the indefeasible prior payment in full in cash of all existing and future indebtedness, obligations, fees, charges, expenses and costs owing from the Borrower to the Bank (the "**Senior Obligations**"). The term "Senior Obligations" as used herein includes, without limitation, principal and interest due to Bank pursuant to the Secured Term Mortgage Note in the original principal amount of \$1,830,000.00 (the "Mortgage Note") of even date herewith, the Revolving Loan Note in the original principal amount of \$305,000 (the "Revolving Note") of even date herewith, and all other documents, instruments or agreements evidencing, securing or otherwise pertaining to the Senior Obligations, as the same maybe modified, amended, renewed, extended or restated from time to time (all of the foregoing, together with all instruments and documents executed in connection therewith, the "**Bank Documents**"), and also includes any and all legal fees, forbearance fees, costs, other expenses and interest accruing during a bankruptcy proceeding with respect to Borrower, notwithstanding any law to the contrary. In furtherance of the foregoing, the Borrower shall not make, and the Creditor shall not accept, receive or retain from the Borrower any direct or indirect payment (in cash, property, or securities or by set-off or otherwise) upon or with respect to the Creditor Documents as a result of any acceleration, demand, suit for collection, action or enforcement of the Creditor Note, the Creditor Indebtedness or other Creditor Documents, or in respect of any prepayment, redemption, retirement, purchase or other acquisition of the Creditor Note, the Creditor Indebtedness or other Creditor Documents, until all the Senior Obligations have been indefeasibly paid in full in cash; provided, however that so long as: (a) no Event of Default exists under the Bank Documents, or would immediately thereafter exist under the Bank Documents, as the result of a scheduled payment under the Creditor Documents as to which Borrower or Bank has provided written notice to Creditor at the address set forth below, to the attention of \_\_\_\_\_; and (b) Bank has not notified Creditor that a Blockage Period (as defined below) is being commenced (such notice, a "**Blockage Notice**"), then (i) regularly scheduled payments of interest may be made by Borrower to Creditor on the Creditor Note if a Blockage Notice has not been received; provided, however, that Borrower shall not make any principal payments prior to the Bank having been paid in full on its Mortgage Note; and (ii) Creditor may receive Permitted Junior Securities. In the event that regularly scheduled payments on the Creditor Note are prohibited pursuant to the terms of this section as a result of an Event of Default as set forth in (a) above and with respect to which Bank has issued a Blockage Notice, the period during which said payments shall not be permitted as a result of said Event of Default (the "**Blockage Period**") shall begin on the date of the Blockage Notice and terminate one hundred eighty (180) days from the commencement of the Blockage Period or the date on which the subject Event of Default has been waived or cured (whichever is earlier) unless, prior to the termination of the Blockage Period, Bank shall have accelerated some or all of the Senior Obligations and commenced the enforcement of its rights and remedies under the Bank Documents as a result of such Event of Default, in which event the Blockage Period shall continue for as long as proceedings are pending by or on behalf of Bank to collect the Senior Obligations or Bank is otherwise pursuing collection of the Senior Obligation in accordance with its normal and customary practices. A new Blockage Period may not be commenced until at least ninety (90) days has passed since the end of the last Blockage Period, unless, with respect



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to the Event of Default giving rise to the new Blockage Period, Bank has accelerated some or all of the Senior Obligations and commenced the enforcement of its rights and remedies under the Bank Documents. As used in this Agreement, "**Permitted Junior Securities**" means securities, including debt or equity securities, the payment of which (A) is subordinate, at least to the extent and in the manner provided in this Agreement to the payment in full of all Senior Obligations; and (B) is not payable prior to payment in full in cash of the Senior Obligations.

Upon the termination of a Blockage Period, Borrower may pay and Creditor may retain for its own account payments that were not received during the Blockage Period if no Event of Default then exists under the Bank Documents, or would immediately thereafter exist under the Bank Documents as a result of the payment of such blocked payments under any Bank Documents.

4. Subject to the Creditor's rights under Sections 8 through 11 hereof, unless and until all the Senior Obligations shall be indefeasibly paid in full in cash, the Creditor covenants and agrees that it shall not, directly or indirectly: (a) exercise or enforce any right of acceleration, demand or set off against the Borrower or the assets or property of the Borrower, including the Collateral (as defined below or in the Bank Documents); (b) make any claim or commence or initiate any action, lawsuit, case or proceeding against the Borrower to enforce any of the rights and remedies under the Creditor Documents or join together or with any creditor in any action, lawsuit, case or proceeding against the Borrower; (c) ask for, demand, take, accept or receive any action to obtain, any additional security interest or lien on the assets or property of the Borrower or exercise any right of foreclosure or any right or remedy with respect to the Borrower or the assets or property of the Borrower; (d) contact any account debtors of Borrower or otherwise seek payment from any obligor on any Collateral; (e) take any action under the provisions of any state or federal law, including without limitation, the Uniform Commercial Code, or under any contract or agreement, to enforce, foreclose upon or take possession of or sell any property or assets of Borrower including the Collateral; or (f) take any other action that interferes with, is prejudicial to or inconsistent with Bank's rights and first priority secured position with respect to the Borrower or the assets or property of the Borrower including, without limitation, that the Creditor shall not take any action that will impede, interfere with, restrict, or restrain the exercise by the Bank of its rights and remedies under the Bank Documents. If Creditor shall attempt any of the foregoing actions, the Borrower or the Bank may interpose as a defense or plea the making of this Agreement and the Bank may intervene and interpose such defense in its name or in the name of the Borrower and the Borrower or the Bank may by virtue of this Agreement restrain the enforcement thereof in the name of the Borrower or the Bank.

5. Creditor represents, covenants and agrees that it: (a) is the sole owner and holder of the Creditor Note and that it has not sold or assigned any interest therein; (b) has not granted any prior subordinations with respect to the Creditor Note; (c) will not sell, assign or dispose of Creditor Note or any interest therein unless the recipient agrees in writing to be bound by this Agreement; (d) will not grant, create, or incur any security interest, lien, charge or other encumbrance whatsoever in connection with the Creditor Note; and (e) will not modify, amend, alter, change, substitute or extend any of the terms or provisions of the Creditor Note, or any of the other Creditor Documents in any manner which would make Borrower's obligations thereunder more burdensome than they are as of the date hereof (provided, however, that

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Creditor may pledge the Creditor Documents, subject always to this Agreement, to its senior Bank as partial security for its line of credit with such lender).

6. In furtherance of the foregoing, Creditor assigns to the Bank all of its rights in any claims it may have against the Borrower or its properties arising out of or relating to the Creditor Note, or other Creditor Documents or all other Creditor Indebtedness ("**Creditor Claims**") and pursuant hereto, in any bankruptcy, receivership or other insolvency proceeding relative to the Borrower or its property or assets, the Bank shall have the right to act as the Creditor's attorney-in-fact for the purposes specified herein and the Creditor hereby irrevocably appoints Bank and each of its officers as Creditor's true and lawful attorney, and grants to the Bank a power of attorney with full power of substitution, in the name of Creditor or in the name of Bank (which power is coupled with an interest and is irrevocable), for the use and benefit of Bank, without notice to Creditor or its successors or assigns and at Bank's option to: (a) enforce the Creditor Claims either in Bank's own name or in the name of the Creditor, by proof of debt, proof of claim, suit or otherwise; and (b) collect any assets of Borrower distributed, divided or applied by way of dividend or payment, or any securities or the proceeds of any realization upon the same in respect of the Creditor Claims, and apply same to the Senior Obligations until all of such have been indefeasibly paid in full in cash. Notwithstanding said assignment, the Bank agrees that any payments received by the Bank in excess of its debt shall be held in trust for Creditor. After the Senior Obligations have been indefeasibly paid in full in cash, Bank agrees to reassign the Creditor Claims to the Creditor.

7. Any payments or distributions of assets of the Borrower of any kind or character, whether in cash, property or securities or by set-off or otherwise, and whether as a payment on the Creditor Note, which are not permitted to be received or retained by Creditor hereunder or are received by the Creditor during any reorganization or insolvency proceeding (except for Reorganization Securities or Debt), shall be held by the Creditor in trust for and turned over to the Bank for application to the Senior Obligations until all such Senior Obligations shall have been indefeasibly paid in full in cash. To the extent any such payments are turned over by Creditor to Bank, Creditor shall have the right to receive payment of any such turned over payment, together with interest thereon, after Bank has been otherwise paid in full (taking into account such turned over payment) and shall be subrogated to the interest of Bank therein. As used in this Agreement, "**Reorganization Securities or Debt**" means securities received or debt allowed in any reorganization or insolvency proceeding which are subordinate and junior in right of payment to the payment of the Senior Obligations, at least to the extent provided in this Agreement.

8. Bank and Creditor agree that at all times, whether before, after or during the pendency of any bankruptcy, reorganization or other insolvency proceeding involving Borrower, and notwithstanding the priorities which would ordinarily result from the order of the granting of any lien, or the order of filing of any financing statements or mortgages, the priorities of the liens in favor of Bank and Creditor shall be as follows:

(a) The lien of Bank with respect to all of the property of Borrower, including, without limitation, the accounts, chattel paper, documents, general intangibles, instruments, deposit accounts, letter of credit rights, supporting obligations, commercial torts, investment property, inventory, equipment and other goods, as these terms are defined in the Uniform

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Commercial Code, the Redevelopment Agreement, the Village of Streamwood, Cook, County, Illinois Interest Bearing Non-Recourse Taxable Redevelopment Note (Phoenix Lakes Redevelopment Project) Series 2001 and the real estate located at Lots 4, 5, 6 and 7 located in Phoenix Lake Business Park, Streamwood, Illinois, (hereinafter the “**Collateral**”) arising pursuant to the Bank Documents shall constitute, vis-à-vis Creditor, a first priority lien on the Collateral for the debt described in the Bank Documents.

(b) The liens of Creditor with respect to the Collateral in which it has a lien shall constitute, vis-à-vis Bank, a second priority lien on such Collateral for the debt described in the Creditor Documents.

9. In the event of any distribution of the proceeds of the Collateral, whether by reason of liquidation, bankruptcy, arrangement, receivership, assignment for the benefit of creditors or any other action or proceeding involving the readjustment of the obligations and indebtedness of Borrower, or the application of the assets of Borrower to the payment or liquidation thereof, or as a result of acceleration of the Creditor Indebtedness or the exercise of any rights as described in Section 4 hereof including any foreclosure or the dissolution or winding up of Borrower’s business or the sale of all or substantially all of Borrower’s assets (hereinafter a “**Liquidation**”), all distributions of proceeds of the Collateral shall be made to Bank and Creditor in accordance with the respective priorities of their liens, as set forth in Section 8 above. Each party agrees that should it receive any monies from the Liquidation, sale, casualty or other disposition of, or as a result of its lien in, the collateral at any time during the term of this Agreement, it will (unless otherwise restricted or prohibited by law) hold the same in trust for, and promptly pay over the same to, the party entitled to receive such monies in accordance with the priorities of liens provided hereunder.

10. Any party may conduct a Liquidation of those assets of the Borrower in which that party has a lien, subject, however, to the following:

(a) Any party which conducts a Liquidation shall endeavor to provide the other party with copies of all demands, communications, correspondence and pleadings which relate to such party’s conduct of such Liquidation.

(b) Bank and Creditor each hereby waive any and all rights to require the other to marshal the Collateral or any part thereof upon any Liquidation of any such Collateral.

(c) Creditor may not initiate or conduct a Liquidation, or exercise or enforce any rights of foreclosure or other remedy against the assets or property of Borrower, or notify the account debtors of Borrower without first receiving the prior written consent of Bank.

The foregoing notwithstanding, in the event there exists an Event of Default under the Bank Documents and Bank commences the enforcement of its security interest pursuant to Part 6 of Article 9 of the Uniform Commercial Code or commences foreclosure on the real property, then notwithstanding anything to the contrary contained herein, Creditor may accelerate the Creditor Indebtedness and also begin the enforcement of its security interest pursuant to Part 6 of Article 9 of the Uniform Commercial Code and/or commence foreclosure on the real property, provided, however, Creditor shall not take any actions which would violate the rights of Bank

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including, without limitation, the taking of possession of any Collateral or the notification of account debtors, but may join with Bank in conducting a joint sale of the Collateral pursuant to Part 6 of Article 9 of the Uniform Commercial Code. In the event that Bank ceases the enforcement of its security interest, Creditor shall also cease its enforcement of its security interest and waive its demand for payment in full of the Creditor Indebtedness.

11. In the event of any sale of the Collateral, whether in the ordinary course of business or not in the ordinary course of business, Creditor shall execute and deliver to Bank and/or Borrower all such consents to such sale of Collateral and releases of its liens (including without limitation, partial releases under the Uniform Commercial Code) with respect to such Collateral as Bank may reasonably request in order to effect such sale. The proceeds of any such sale to be distributed to Bank in accordance with Section 8 above. After the Senior Obligations have been indefeasibly paid in full in cash, Bank agrees that any excess proceeds obtained by it from a sale of the Collateral shall be distributed to the Creditor.

12. Each of the parties shall provide the other with a copy of any notice of demand, or similar communication as and when given the Borrower.

13. Any payments made by Borrower to Creditor during periods when (a) no Event of Default exists or existed as a result of such payment as to which Borrower or Bank has provided written notice to Creditor; and (b) Bank has not notified Creditor that a Blockage Period is being commenced, may be retained by Creditor and shall not be subject to recapture by Bank.

14. The subordinations and agreements set forth herein shall remain in full force and effect until Bank has been indefeasibly paid in full in cash the Senior Obligations and Bank shall immediately terminate its security interests in and to the Collateral. The rights and obligations of the Creditor and Bank hereunder shall not be affected by any act or failure to act by Borrower (regardless of any knowledge Bank may have thereof) or the bankruptcy or insolvency of Borrower and shall be effective regardless of whether either Bank or Creditor, in the future, seeks to rescind, amend, terminate or reform by litigation or otherwise their respective agreements with Borrower. The Bank may, without notice to Creditor (which right to notice is waived) modify, amend, waive, extend, release or otherwise deal with the Borrower, the Senior Obligations, or any obligor thereon or the Collateral in Bank's discretion, without affecting any Bank's rights or remedies hereunder, but it agrees that it will not change the interest rate, principal amount or extend the term.

15. Bank and Creditor are hereby authorized to demand specific performance of this Agreement at any time when Creditor and/or Bank shall have failed to comply with any of the provisions hereof. Creditor and/or Bank hereby irrevocably waives any defense based on the adequacy of a remedy at law, or any other defense which might be asserted as a bar to such remedy of specific performance.

16. This Agreement is solely for the benefit of Bank and Creditor and no other person or entity shall be entitled to rely upon, or is intended to receive any benefit under or pursuant to this Agreement. Nothing contained in this Agreement is intended to affect or limit, in any way whatsoever, either party's security interest in the Collateral, insofar as the rights of Borrower and



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third parties are involved. Bank and Creditor specifically reserve any and all of their respective rights, powers and remedies against Borrower and any third parties.

17. All notices and other communications hereunder shall be made by telegram, electronic transmitter, overnight air courier or certified or registered mail, return receipt requested, and shall be deemed to be received by the party to whom sent one (1) business day after sending if sent by telegram, electronic transmitter or overnight air courier, and there (3) Business Days after mailing (if sent by certified or registered mail). All such notices and other communications to a party hereto shall be addressed to such party as follows:

If to Bank: Merchants and Manufacturers Bank  
 25140 W. Channon Drive  
 Channahon, IL 60410  
 Attn: Steven Davis  
 Telephone: (815) 467-3824  
 Telecopier: 815-467-3843  
 Email: sdavis@m-mbank.com

If to Creditor

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Attn:  
 Telephone:  
 Telecopier:  
 Email:

or to such other address as such party may designate for itself in a notice to the other party given in accordance with this section.

18. No modification, rescission, waiver, release or amendment of any provision of this Agreement shall be made except by a written agreement signed by a duly authorized officer of Bank and Creditor.

19. The provisions of this Agreement are independent of and separable from each other, and no such provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other such provision may be invalid or unenforceable in whole or in part. If any provision of this Agreement is prohibited or unenforceable in any jurisdiction, such provision shall be ineffective in such jurisdiction only to the extent of such prohibition or unenforceability and such prohibition or unenforceability shall not invalidate the balance of such provision to the extent it is not prohibited or unenforceable nor rendered or unenforceable in any other jurisdiction.

20. This Agreement constitutes the final and complete agreement and understanding between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior negotiations, understandings and agreements between such parties with respect to such transactions.

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21. Bank and Creditor agree that any action or proceeding to enforce or arising out of this Agreement may be commenced in any court of the County of Cook, Illinois and in the United States District Court for the Northern District of Illinois, Eastern Division and Bank and Creditor waive personal service of process and agree that a summons and complaint commencing an action or proceeding in any such court shall be properly served and shall confer personal jurisdiction if served by registered or certified mail to either Bank or Creditor or as otherwise provided by the Laws of the State of Illinois or the United States.

22. Creditor and Bank each agree to execute and deliver such additional instruments and documents and take such additional actions as may reasonably be necessary in order to carry out and evidence the terms of this Agreement.

23. This Agreement shall be governed by and construed under the laws of the State of Illinois and shall be binding upon, and inure to the benefit of; the successors and assigns of the parties hereto.

24. In the event the Senior Obligations are paid in whole by a lender other than Bank, regardless of whether or not the Bank Documents are assigned to the refinancing lender, the refinancing lender shall be entitled to all rights of Bank hereunder and the obligations of Borrower to such refinancing lender with respect to such refinancing shall constitute "Senior Obligations" as defined herein. Upon request by such refinancing lender, Creditor shall promptly enter into a subordination agreement with such refinancing lender on terms substantially similar to the terms contained in this Agreement.

25. This Agreement may be executed in any number of counterparts, each of which when signed will be deemed to be an original and all such counterparts together shall be deemed to be an original.


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## SCHEDULE A

### CREDITOR DOCUMENTS

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A large, stylized handwritten signature in black ink, consisting of several loops and flourishes, is centered on the page. The signature is partially overlaid by a diagonal watermark.

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Executed as an instrument under seal as of the date first above written.

WITNESS:

CREDITOR:

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title: Authorized Signatory

BANK:

Merchants and Manufacturers Bank

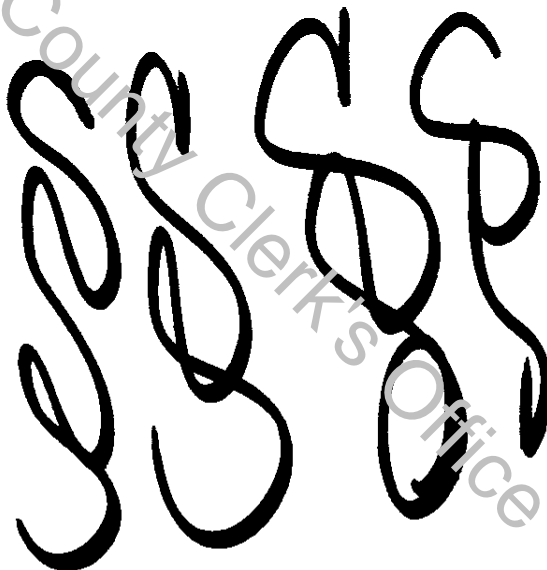
\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title: Vice President

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Handwritten signatures in black ink, appearing to be two distinct signatures, one on the left and one on the right, overlapping the diagonal watermark.

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## ACKNOWLEDGMENT AND AGREEMENT

The undersigned, Phoenix II LLC, does hereby accept and acknowledge receipt of a copy of the foregoing Agreement, and agrees that: (a) it will not pay any of the Creditor Indebtedness except as the foregoing Agreement provides; (b) it will be bound by all provisions of the foregoing Agreement; and (c) that it shall have no rights, remedies or priorities either directly or as a third party beneficiary by virtue of the Agreement. In the event of a breach by the undersigned of any of the provisions herein, it shall constitute an Event of Default under each of the Bank Documents.

All capitalized terms used in this Acknowledgment and Agreement without definition shall have the same meanings as set forth in the foregoing Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Acknowledgment and Agreement to be duly executed under seal as of the day and year first above written.

BORROWER:

Phoenix II, LLC

By: MAS Development Corporation, its manager

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Property of Cook County Clerk's Office