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Lakeside - Brown Mortgage v3

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Cook County Recorder 74.00

Subject Property

NEC Willow Road and Patriot Blvd.,
Glenview (Cook County), Illinois

PIN: 04-22-100-015



Prepared By and To Be Mailed To:

John J. Turner, Esq.
527 South Wells Street
Chicago, IL 60607
(312) 987-1900

MORTGAGE

THIS MORTGAGE ("Mortgage") dated as of October 10, 2002, is made to and in favor of LAKESIDE BANK, an Illinois banking corporation (the "Lender"), 55 West Wacker Drive, Chicago, Illinois 60601, by and from 2929 PATRIOT BLVD., L.L.C., an Illinois limited liability company (the "Borrower").

The Lender is the owner and holder of a promissory note of even date herewith (the "Note"), at interest and payable as stated therein, evidencing the indebtedness of the Borrower to the Lender under a construction loan in the principal amount of **Eight Million Dollars (\$8,000,000.00)** (the "Loan") and with a scheduled maturity of March 1, 2004, subject to extension to March 1, 2009; such interest is at a variable per annum rate based on the Lender's "prime rate" from time to time, subject to conversion to a fixed rate.

For Value Received, and to secure the due and timely payment and performance of the indebtedness and obligations owed to the Lender with respect to the Loan and under the Note and any modifications, extensions, renewals or replacements thereof, and under the "Loan Documents", as that term is used and defined in the Note:

THE BORROWER HEREBY CONVEYS AND MORTGAGES AND WARRANTS to the Lender the parcels of real estate described in attached Exhibit A (the "real estate") and all of the Borrower's existing and hereafter acquired right, title and interest therein including any after-acquired title or reversions or remainders, together with the following properties and interests with respect to the

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real estate: (a) all buildings and other improvements (collectively, the "improvements"), and all materials for the construction or repair thereof, now or hereafter erected, placed or located thereon; (b) all fixtures of any kind now or hereafter located thereon; (c) all easements, rights-of-way and rights used in connection therewith or with a means of access thereto, and appurtenances thereto, including without limitation any abutting road, street, highway or alley opened or hereafter vacated; (d) all existing and future leases (and all security given by tenants thereunder, including the right to proceeds under any letter of credit as security), rents, issues, proceeds and profits thereof, with full and complete authority and right in the Lender in case of a default hereunder to demand, collect, receive and receipt for same; (e) all items of tangible personal property of any kind or character now or hereafter located thereon, including without limitation "inventory" and "equipment" as those terms are used and defined in the Illinois Uniform Commercial Code as in effect from time to time ("UCC"), and used or useful in connection therewith or the leasing thereof or the operation of any business or other activity conducted thereat, but excluding any such items owned by any tenant thereof; (f) all items of intangible personal property, including without limitation accounts, chattel paper, commercial tort claims, deposit accounts, general intangibles (including without limitation payment intangibles and software), instruments and letter of credit rights (as those terms are used and defined in the UCC), related to or in connection with or arising from said real estate or the operation thereof; and (g) all additions, accessions, substitutions, replacements and proceeds of, for or to any of such items, all of which are collectively referred to hereinafter as the "Personalty". Notwithstanding its designation as Personalty, each of the foregoing "tangible" items is hereby deemed to be and remain and form a part of the real estate parcel to which it relates and to be covered by the lien hereof; and (i) as to any such item which does not form a part and parcel of the real estate or does not constitute a "fixture" under the UCC, and (ii) as to all of the foregoing "intangibles", the Borrower hereby grants the Lender a security interest therein and this Mortgage shall also constitute a UCC "security agreement", with the Lender as the "secured party" and the Borrower as the "debtor" hereunder.

As used hereinafter and unless context requires otherwise, the term "Mortgaged Premises" shall mean and include the real estate and the aforesaid properties and interests.

Construction Mortgage. The proceeds of the Loan shall be utilized for the construction and completion of certain improvements on or to, the subject real estate (the "Project"), pursuant to and as provided in that certain "Construction Loan Agreement" of even date herewith (the "Loan

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Agreement"), being one of the aforesaid Loan Documents; this Mortgage constitutes a "construction mortgage" within the meaning of Section 9-334(h) of the UCC.

Incorporation of Documents. The Note and the Loan Documents are hereby incorporated herein by reference.

THE BORROWER HEREBY REPRESENTS AND WARRANTS TO AND COVENANTS AND AGREES WITH THE LENDER AS FOLLOWS:

1. **Payment and Performance.** All indebtedness and obligations owed to the Lender hereunder and under the Note and the Loan Documents shall be duly and timely paid and performed.

2. **Title to the Mortgaged Premises.** The Borrower owns and holds a fee simple title to the Mortgaged Premises free and clear of all liens, encumbrances and other adverse title or survey matters other than the "Permitted Exceptions" described in Paragraph 21 below, and has legal power and the authority to mortgage and convey the Mortgaged Premises and to execute and deliver this Mortgage.

3. **Priority, Maintenance and Further Assurances of Lender's Lien; After-acquired Property.**

A. This Mortgage is now and will at all times hereafter be maintained as a first and paramount lien on the Mortgaged Premises. The Borrower will not directly or indirectly create, or permit or suffer to stand against the Mortgaged Premises or any part thereof (including without limitation rents, issues and profits), any lien, security interest, encumbrance or charge (including without limitation any tax or mechanic's lien) which is or could become superior to or on a parity with the lien of this Mortgage; if and when any of the foregoing is filed or claimed against the Mortgaged Premises, the Borrower shall promptly cause the same to be discharged or released of record, or "insured over" by a title insurer acceptable to the Lender, or, at Borrower's option and if appropriate under the circumstances, contested by means of a "Permitted Contest" described in Paragraph 4 below.

B. If any action or proceeding (including without limitation actions for condemnation or for building [or other] code violations) is threatened or instituted to recover possession of the Mortgaged Premises or to accomplish any other purpose which could adversely affect this Mortgage, or the Mortgaged Premises or the Borrower's title thereto, the Borrower will immediately upon its receipt thereof deliver to the Lender true copies of all notices, process, pleadings or other papers regarding such action or proceeding.

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C. In no event shall the Borrower do, or permit to be done or omit to do or permit the omission of, any act or thing the doing of which, or omission to do which, would impair the security of this Mortgage. The Borrower 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 materially changing the uses which may be made of the Mortgaged Premises or any part thereof without the Lender's prior written consent.

D. All property of every kind acquired by the Borrower after the date hereof and which by the terms hereof is required or intended to be subjected to the lien hereof shall, automatically upon such acquisition and without the requirement of any further documentation or action, become subject to the lien and security of this Mortgage. Nevertheless, and in any event, the Borrower at its own expense will do such further acts and execute, acknowledge and deliver such further conveyances, mortgages, security agreements, financing statements and assurances (including without limitation "estoppel certificates") as the Lender shall reasonably require from time to time to accomplish the purpose, or to effect an assignment or transfer, of this Mortgage.

4. **Permitted Contests.** The Borrower may, at its own expense and upon advance written notice to the Lender, by means of an appropriate legal or administrative proceeding that is commenced and diligently prosecuted in good faith (a "Permitted Contest"), contest the amount, validity or application of any of the "Impositions" described in Paragraph 5 below, or any lien or other instrument of record adversely affecting the Mortgaged Premises, **provided that:** (a) neither the Mortgaged Premises nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost during the pendency of such Contest, (b) neither the Borrower nor the Lender would be in any danger of any civil or criminal liability for failure to comply therewith, and (c) the Borrower shall have set aside on its books adequate reserves with respect thereto and shall have furnished such security as may be required in the proceedings or as may be reasonably required by the Lender.

5. **Tax and Insurance Payments and Reserves.** The Borrower shall timely pay all general and special taxes, assessments and any other charges (collectively, the "Impositions") levied, assessed, placed or made on or against the Mortgaged Premises (subject to its rights to assert a Permitted Contest), and all "insurance premiums" described in Paragraph 9 below, and shall immediately thereafter deliver to the Lender satisfactory evidence that the same have been paid.

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A. Unless the Lender agrees otherwise in writing, the Borrower shall pay the Lender monthly such sums (the "Deposits") as the Lender shall from time to time require for the purpose of accumulating at least sixty (60) days in advance of the respective due dates thereof amounts sufficient for the full payment of the insurance premiums and the Impositions as they fall due. The Deposits are hereby pledged for the further security of this Mortgage, shall earn no interest, and may, at the Lender's option upon the occurrence of an Event of Default (hereinafter defined), be applied toward the indebtedness secured hereby, and no third party shall have any rights therein or as to the application thereof.

B. The Lender shall have no duty or responsibility to apply the Deposits toward, or to inquire as to the validity or accuracy of, any Impositions or insurance premiums; however, if the Borrower is not then in default under this Mortgage, and upon its request and presentation of the proper bills or invoices therefor, the Lender shall cause the same to be paid from and to the extent of the Deposits then on hand.

6. **Maintenance and Operation of the Mortgaged Premises.**

A. The Borrower shall keep the Mortgaged Premises in good condition, repair and working order and make all repairs, renewals and replacements as and when necessary. The Borrower shall not cause, permit or suffer any impairment or diminishment of the value of or the commission of waste to the Mortgaged Premises, or, without the Lender's prior written consent, change the structural character of or remove or add to any improvements now or hereafter permitted on the Mortgaged Premises. The Borrower in its reasonable discretion and without the Lender's consent may from time to time make nonstructural changes in or to the Mortgaged Premises, provided the changes are suitable thereto and do not impair or diminish the value thereof, and may remove and dispose of any items of the aforesaid Personalty (with the right to retain any proceeds resulting therefrom) which become obsolete, worn-out, or no longer useful in the operation of the Mortgaged Premises or any business conducted thereon, provided the Borrower promptly replaces such items where appropriate, and that title to such replacements is held by the Borrower free and clear of all liens and encumbrances.

B. The Mortgaged Premises and the uses and operations thereof are now and shall at all times hereafter be in full compliance with all applicable laws, rules, codes and regulations of all local, state and federal authorities having jurisdiction with respect thereto, and including without limitation

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the "Environmental Laws" described in Paragraph 27 below, and the provisions of and regulations related to the "Americans with Disabilities" Act and the "Environmental Barriers" Act.

7. **Lender's Inspection.** The Lender or its agents or representatives may from time to time conduct such inspections of the Mortgaged Premises as the Lender at any time deems appropriate.

8. **Books and Records, etc.** The Borrower shall cause to be kept and maintained at all times books of record and account and the data in support thereof pertaining to the Mortgaged Premises and the use and operation thereof (collectively, the "Books"), which shall at all reasonable times be open to the inspection of the Lender or its designee. The Books shall contain full, true and correct entries made in accordance with generally accepted accounting principles consistently applied.

The Borrower shall cause the following to be prepared and delivered to the Lender, all in reasonable detail and certified by an appropriate accounting officer as being complete and correct: operating statements for the Mortgaged Premises, and personal financial statements for each of the makers (except the Trustee) and any guarantors of the Note, all within ten (10) days after the Lender's written request therefor from time to time, and, in any event, within ninety (90) days after the end of each calendar year.

9. **Insurance.**

A. The Borrower shall continuously maintain the following insurance coverages with respect to the Mortgaged Premises and under, in and with such amounts, form, terms, and companies as are reasonably required or approved by the Lender from time to time, and shall timely pay all premiums therefor ("**insurance premiums**"):

(1) Unless the Lender agrees otherwise in writing, casualty insurance against loss of or damage to the improvements by fire and such other risks as are customarily insured against in the area in which the Mortgaged Premises are located, and including without limitation risks insured against under extended coverage policies with "all risks" endorsements, in each case in amounts at all times sufficient to prevent the Lender from becoming a coinsurer under the terms of the applicable policies, but, in any event, in amounts not less than the greater of (a) the principal amount of the Loan, or (b) 100% of the full insurable value of the Mortgaged Premises as reasonably determined by the Lender from time to time; as used herein, the term "full insurable value" means actual replacement cost

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(exclusive of costs of excavation, foundation and footings) without deduction for physical depreciation;

(2) Commercial general liability insurance, and with the Lender as an additional insured thereunder, against any and all claims (and the costs and expenses of defending the same) for personal (including bodily) injury, death and property damage occurring upon or in or about the Mortgaged Premises or resulting from any activity thereat; in any event, the limit of such insurance shall be, per occurrence and in the aggregate, not less than \$2,000,000/2,000,000, and with an additional \$ _____ "umbrella".

(3) Flood insurance, as and when available and if the area of the Mortgaged Premises has been designated as a special flood hazard area by the Federal Insurance Administration, or successor agency;

(4) "Rent Loss", or similar, insurance to cover one year's rent, the policy for which shall be assigned to the Lender at its option;

(5) Such other insurance as the Lender may reasonably require from time to time, and, in any event, as and when any construction work for any part of the Mortgaged Premises commences, coverages for Builder's Risk (including "time element" losses), Worker's Compensation and Contractual Liability.

B. Any insurance obtained by the Borrower pertaining to the Mortgaged Premises in addition to the foregoing shall be for the benefit of the Lender and the Borrower as their interests may appear, and shall conform to the applicable provisions of this Paragraph 9, and the Borrower shall immediately furnish the Lender with each policy thereof.

C. All insurance policies shall include a provision requiring that the coverages evidenced thereby shall not become terminated (whether because of cancellation, expiration of stated term, failure to renew, or otherwise) or materially modified without thirty (30) days prior written notice thereof to the Lender. None of such insurance may be provided for under any "blanket" policy carried by the Borrower, unless the Lender is furnished with satisfactory proof that such policy complies in all respects with the provisions of this Paragraph, and that the coverage provided thereunder will not be reduced or diminished by the use thereof and is at least equal to the coverage which would be provided under a separate policy covering only the Mortgaged Premises.

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D. The Borrower shall deliver to the Lender the originals (or certified copies with a "material change" endorsement) 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, or certificates in case of blanket policies, not less than thirty (30) days prior to their respective dates of expiration.

E. In each policy of the character described in clause (1), (3) and (4) of subparagraph A above, the Lender shall be named as the secured party in a "Lender-Secured Party Loss Payable" endorsement thereto, and as an additional payee where appropriate, and such insurance shall be for the benefit of the Borrower and the Lender as their interests may appear. Any loss covered by such policies and not exceeding \$25,000 may be adjusted with the insurer by the Borrower alone; any loss which exceeds that amount shall be adjusted by both the Borrower and the Lender; in any event, the insurance proceeds for all losses shall be paid over to the Lender only (and not to the Borrower and the Lender jointly), to be held by the Lender without interest and applied or disbursed in accordance with Paragraph 10 below.

10. **Damage or Destruction.**

A. In the event of any loss or damage to the Mortgaged Premises from any cause, the Borrower shall immediately give the Lender written notice thereof, and, subject to the provisions of subparagraph 10D below, shall promptly commence and diligently complete the restoration or rebuilding of the Mortgaged Premises to substantially the same value, condition and character as existed prior to such loss. The work for such restoration or rebuilding (the "Restoration Work") shall be performed pursuant to written contracts, plans and specifications subject to the reasonable approval of the Lender.

B. Subject to the provisions of subparagraph 10E below, all net insurance proceeds received by the Lender pursuant to subparagraph 9E above shall be made available for the Restoration Work. All payments for or toward the Restoration Work shall at the Lender's option be disbursed under procedures and documentation similar to a "construction loan" escrow, and subject to the approval of an inspecting architect engaged by the Lender at the Borrower's cost, without interest.

C. After completion of the Restoration Work, any excess insurance proceeds shall be paid over to the Borrower, without interest.

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D. The Borrower shall have the option in case of damage or destruction to all, or substantially all, of the Mortgaged Premises, to pay the remaining balance of the Loan, and with the same prepayment premium, if any, as provided in the Note; in that event, any insurance proceeds received and held by the Lender pursuant to Paragraph 9 above shall be applied by the Lender toward such payment. To exercise this option the Borrower shall give written notice to the Lender of its intent to do so within ninety (90) days after any such damage or destruction.

E. If any "Event of Default" (as hereinafter defined) then exists, any insurance proceeds received by the Lender or to which it is entitled may be retained by the Lender and, at its option, applied toward payment of the indebtedness secured hereby. Any amount remaining, following such application, shall be paid over to the Borrower, without interest.

F. In any event and notwithstanding any such damage or destruction, the Borrower shall continue to timely pay all scheduled payments falling due hereunder and under the Note.

11. Condemnation

A. As used herein, "Taking" shall mean a taking of all or part of the Mortgaged Premises under the power of condemnation or eminent domain. The Lender may but shall not be required to appear and participate in any proceeding or action for any Taking. The Borrower shall not adjust or compromise any claim for award or other proceeds of a Taking without first giving at least thirty (30) days' advance written notice to the Lender of the proposed basis thereof and without first receiving the Lender's written consent thereto which shall not be unreasonably withheld. Any such award or other proceeds, after allowance for expenses incurred in connection therewith, are hereinafter referred to as the "Condemnation Proceeds".

B. In the event of a Taking of all (or substantially all, hereinafter, "all") of the Mortgaged Premises, or a Taking of less than all of the Mortgaged Premises and if the same are not susceptible to restoration, the Condemnation Proceeds shall be paid to the Lender and applied, at its option, toward payment of the remaining balance of the Note, in which event no prepayment premium (if any) shall be imposed.

C. Subject to subparagraph 11D below, in the event of a Taking of less than all of the Mortgaged Premises which leaves the same susceptible and suitable to restoration, the Condemnation Proceeds shall be applied as follows: if \$25,000 or less, the Condemnation Proceeds shall be paid to and applied by the Borrower to the repair or restoration, to the extent practicable, for any resulting damage to the Mortgaged Premises; if more than the aforesaid amount, the Condemnation Proceeds

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shall be paid over to the Lender, to be held without interest and applied toward such repair or restoration in conformity with and subject to the conditions specified in Paragraph 10 above regarding damage or destruction. In either event and whether or not the Condemnation Proceeds applicable thereto shall be sufficient for the purpose, the Borrower shall promptly repair or restore the Mortgaged Premises as nearly as practicable to substantially the same value, condition and character as existed prior to the Taking, with such changes and alterations as may be made at the Borrower's election in conformity with and subject to Paragraph 6 above and as may be required by such Taking.

D. If any Event of Default then exists, any Condemnation Proceeds received by the Lender or to which it is entitled may be retained by the Lender and, at its option, applied toward payment of the indebtedness secured hereby. Any amount remaining, following such application, shall be paid over to the Borrower, without interest.

12. **Prohibited Transfer or Financing.** The Borrower shall not, without the prior written consent of the Lender and whether voluntarily or by operation of law (except when resulting from the death of any interested party), cause, attempt or agree to cause, suffer or permit any of the following (hereinafter, a "Prohibited Transfer") to occur with respect to all or any portion of (a) the Mortgaged Premises (including without limitation the aforesaid rents, issues, proceeds and profits) or the legal or equitable title thereto, (b) the beneficial interest in any trust the trustee of which becomes (with Lender's prior consent and for so long as it remains) the owner of legal title to the subject real estate, and (c) the interest of (i) each general partner or joint venturer of any partnership or joint venture which, (ii) each owner of more than 25% of the outstanding stock of any corporation which, or (iii) each holder of a voting equity or voting profit-sharing interest in any other entity (including a limited liability company) which, is (or with the Lender's prior consent becomes and for so long as it remains) the owner of said legal title or beneficial interest:

a sale, installment sale, conveyance, assignment, collateral assignment, mortgage, pledge, hypothecation or other encumbrance or transfer, and including any leasing or similar transaction that is the functional equivalent of a real estate sale as subject to a mortgage.

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13. Events of Default. Any of the following acts, events or conditions shall constitute an "**Event of Default**" hereunder:

A. A default in the full and timely payment of any amount (1) falling due under the Note and which remains uncured for the applicable "cure" period, if any, provided for therein, or (2) falling due hereunder or that is required by the terms hereof to be paid (including without limitation any Imposition) and which remains uncured for a period of fifteen (15) days, except that there shall be no cure period for any such default that in the Lender's reasonable judgment constitutes an immediate threat to the Mortgaged Premises or the lien hereof, and the Lender shall be entitled to cure or take such other action regarding the same as it deems reasonable;

B. A Prohibited Transfer;

C. Any other occurrence that is expressly defined or designated in the Note or in any other Paragraph hereof as an "Event of Default";

D. Any other occurrence that constitutes a default in the due and timely performance or observance of any other obligation, covenant or agreement contained in this Mortgage and which remains uncured or continues for a period of thirty (30) days after the Lender gives the Borrower written notice thereof.

14. Lender's Remedies upon an Event of Default; Borrower's Waivers.

A. Upon the occurrence of any Event of Default, the Lender may at its election and without any notice to or demand upon the Borrower exercise any one or more of the following remedies:

(1) Accelerate the maturity of the indebtedness secured hereby, in which event the unpaid principal and accrued interest under the Note and all other sums due thereunder or hereunder or secured hereby, including amounts payable under the Loan Documents shall become immediately (and, whether or not such Event of Default is subsequently remedied by the Borrower, shall thereafter remain) due and payable in full and, until paid, shall bear interest at the per annum rate which is described in the Note as its (and which is hereinafter referred to as the) "**Default Rate**". Whether or not the Lender exercises the foregoing right of (or thereafter rescinds any such) acceleration, all reasonable costs, expenses and attorneys' fees incurred by or on behalf of the Lender with respect to any Event of Default shall be due and payable by the Borrower upon demand and with interest thereafter at the Default Rate, and shall constitute additional indebtedness secured hereby;

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(2) Enter upon and take possession of the Mortgaged Premises or any part thereof, and exclude the Borrower and all other persons and any and all property therefrom, and may hold, operate, manage, and lease the same and receive all earnings, income, rents, issues, and proceeds accruing with respect thereto. The Lender shall be under no liability for or by reason of such entry, taking of possession, removal, holding, operation or management, except that any amounts so received shall be applied as hereinafter provided in this Paragraph. While in possession of the Mortgaged Premises, the Lender shall have the following powers: (a) to collect the rents and manage, lease, alter and repair the Mortgaged Premises, obtain insurance and in general have all powers and rights customarily incident to absolute ownership; and (b) to pay out of the rents so collected, and in such order as the Lender may determine, the management and repair charges, taxes, insurance, commissions, fees and all other expenses and, after creating reasonable reserves, apply any balance on account of the indebtedness secured hereby; and the Lender may remain in such possession of the Mortgaged Premises after the commencement of any foreclosure proceedings. The Lender shall incur no liability for, nor shall the Borrower assert any claim, setoff or recoupment as a result of, any action taken while the Lender is in such possession, except only for the Lender's own gross negligence or willful misconduct. If no foreclosure proceedings are commenced, the Lender may remain in such possession as long as an Event of Default is not remedied in full;

(3) Commence foreclosure proceedings as to the lien of the Mortgage, in accordance with applicable law;

(4) Apply for the appointment of the Lender or another as the receiver for the Mortgaged Premises, whether or not foreclosure proceedings have been commenced, or, if commenced, apply for the appointment of the Lender as "mortgagee in possession". The Borrower hereby consents (and covenants not to object) to any such appointment, and acknowledges that the same may be made without regard to the then value of the Mortgaged Premises or the then solvency or insolvency of the Borrower; and

(5) Exercise any and all other rights, powers and remedies now or hereafter existing under the Loan Documents or at law or in equity.

B. The proceeds of any foreclosure sale, or UCC or other sale, of the Mortgaged Premises or part thereof or any interest therein, and all amounts received by the Lender by reason of any holding, operation or management of the Mortgaged Premises or any part thereof, together with any

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other monies at the time held by the Lender, shall be applied in the following order of priority, and without interest:

- (1) To all reasonable costs and expenses of the sale of the Mortgaged Premises or any part thereof or any interest therein, or entering upon, taking possession of, removal from, holding, operating and managing the Mortgaged Premises or any part thereof, as the case may be, together with (a) the costs and expenses of any receiver of the Mortgaged Premises or any part thereof appointed pursuant hereto and (b) any taxes, assessments or other charges, prior to the lien of this Mortgage, which the Lender may consider necessary or desirable to pay; then
- (2) To any indebtedness secured hereby and at the time due and payable, other than the indebtedness with respect to the Note at the time outstanding; then
- (3) To all amounts of principal, premium (if any) and interest at the time due and payable on the Note at the time outstanding (whether at maturity or on a date fixed for any installment payment or any prepayment or by declaration of acceleration or otherwise), including interest at the Default Rate on any overdue principal and premium and (to the extent permitted under applicable law) on any overdue interest; and, in case such monies shall be insufficient to pay in full the amount so due and unpaid upon the Note, then, first to the payment of all amounts of interest at the time due and payable on the Note, and second, to the payment of all amounts of principal and premium (if any) at the time due and payable on the Note; and then
- (4) The balance, if any, to the person or entity then entitled thereto pursuant to applicable state law.

C. THE BORROWER HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION UNDER ANY JUDGMENT OF FORECLOSURE OF THIS MORTGAGE, AND ANY REDEMPTION RIGHTS GRANTED BY THE "ILLINOIS MORTGAGE FORECLOSURE LAW" ("IMFL"), ON BEHALF OF THE BORROWER AND EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE MORTGAGED PREMISES SUBSEQUENT TO THE DATE OF THIS MORTGAGE. Further, the Borrower hereby: waives the benefit of all appraisement, valuation, stay or extension laws, and any reinstatement rights (e.g., as under Section 15-1602 of the IMFL), now or hereafter in force, and all rights of marshalling in the event of any sale hereunder of the Mortgaged Premises or any part

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thereof or any interest therein; and releases and waives all rights and benefits under and by virtue of the homestead exemption laws of the State of Illinois.

15. **Rights are Cumulative.** Each right, power and remedy of the Lender now or hereafter existing under the Loan Documents or at law or in equity shall be cumulative and concurrent and in addition to every right, power and remedy provided for in this Mortgage, and the exercise of a right, power or remedy shall not preclude the simultaneous or later exercise of any other right, power or remedy; unless otherwise expressly provided herein, notice by the Lender of any such exercise is not required to be given.

16. **No Waiver by Lender.** No delay or failure by the Lender to insist upon the strict performance of any provision hereof or of the Note or to exercise any right, power or remedy provided for herein or therein as a consequence of any default hereunder or thereunder, and no acceptance of any payment of the principal, interest or prepayment premium, if any, on the Note during the continuance of any such default, shall constitute a waiver of any such provision, such default or such right, power or remedy or shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No waiver of any default hereunder shall affect or alter this Mortgage, which shall continue in full force and effect with respect to any other then existing or subsequent default.

17. **Expense of Litigation and Preparation therefor.** If any litigation or proceedings (including without limitation collection, foreclosure, probate or bankruptcy proceedings) with respect to the Lender's rights, security interests or liens (collectively, "Rights") in, to or under this Mortgage, the Note, the Loan Documents or the Mortgaged Premises, are threatened or commenced and under which the Lender is or would be a proper party or participant, all reasonable costs, expenses and attorneys' fees incurred by or on behalf of the Lender in the prosecution, defense or protection of its Rights, or in preparation therefor, shall be due and payable by the Borrower upon demand and with interest thereafter at the Default Rate, and constitute additional indebtedness secured hereby.

18. **Compromise of Actions.** Any action, proceeding or claim made or brought by the Lender pursuant to or under this Mortgage, or otherwise, may be compromised, withdrawn or otherwise dealt with by the Lender without any notice to or approval of the Borrower, except as otherwise expressly provided herein.

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19. **Lender's Performance of Borrower's Obligations.** In the event of the Borrower's failure to do so, the Lender may but is not expected or required to pay or perform any act or payment required hereunder and may do so in any form or manner it deems expedient, including without limitation payment of real estate taxes, insurance premiums or prior encumbrances. All payments made and expenses incurred in connection therewith, and any other sums advanced by the Lender to protect the Mortgaged Premises and the lien hereof, shall be due and payable by the Borrower upon demand and with interest thereafter at the Default Rate, and shall constitute additional indebtedness secured hereby.

20. **Loan Expenses.** Whether or not any of the proceeds of the Loan have been disbursed, all reasonable costs, expenses and fees incurred by the Lender in connection with the commencement, processing or closing of the Loan transaction (including without limitation title, UCC searches, appraisal, survey and inspection [e.g., environmental audit] charges, Loan fees or "points", and reasonable costs and attorneys' fees of Lender's loan counsel), other than those expressly assumed by the Lender, shall be due and payable by the Borrower upon demand and with interest thereafter at the Default Rate, and shall constitute additional indebtedness secured hereby.

21. **Definitions of "Borrower", "Lender", and "Permitted Exceptions".**

Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein: (a) the term "Borrower" shall be deemed to mean and include (i) each maker and any present or subsequent guarantor of the Note, (ii) any subsequent owner of the subject real estate, including the trustee of a trust, (iii) each beneficiary of any such trust; (iv) each general partner or joint venturer of any partnership or joint venture which, or owner of more than 25% of the outstanding stock of any corporation which, or holder of a voting equity or voting profit-sharing interest in any other entity (including a limited liability company) which, is or becomes such subsequent owner or such beneficiary; (b) the term "Lender" shall, in addition to the aforesaid Lender, be deemed to mean and include any subsequent holder(s) of the Note; and (c) the term "Permitted Exceptions" appearing in Paragraph 2 above shall have the meaning assigned thereto in the aforesaid Loan Agreement, which constitutes one of the aforesaid Loan Documents.

22. **Indemnification.** The Borrower will protect, indemnify, defend and hold harmless the Lender from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against the Lender, as a result of (a) ownership of the Mortgaged

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Premises or any interest therein or receipt of any rent or other sum therefrom, (b) 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 adjoining sidewalks, curbs, vaults, vault space, adjacent parking areas or streets or ways (collectively, "adjacent areas"), (c) any use, nonuse or condition of the Mortgaged Premises or any part thereof or said adjacent areas, (d) any failure on the part of the Borrower to perform or comply with any of the terms of this Mortgage, or (e) 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. Any amounts payable to the Lender under this Paragraph shall be due upon demand and with interest thereafter at the Default Rate, and shall constitute additional indebtedness secured hereby. The obligations of the Borrower under this Paragraph shall survive any release, satisfaction, termination or extinguishment (and whether by foreclosure or otherwise) of this Mortgage and/or the lien hereof, and notwithstanding the "defeasance" provisions of Paragraph 23 below.

23. **Defeasance.** As and when the Borrower has made full payment of all sums due the Note in accordance with the terms thereof, and all other sums payable hereunder, and has complied with all other terms hereof and the terms of the Note and the Loan Documents, this Mortgage and the estate and the rights hereby created in favor of the Lender, and (except as to its duty to indemnify the Lender under Paragraphs 22 and 27 hereof) the liabilities hereby imposed upon the Borrower, shall cease, terminate and become released, and thereupon the Lender, upon the written request and at the expense of the Borrower, shall execute and deliver to the Borrower (and upon payment of a reasonable "preparation" fee) such instruments as shall be required to evidence of record the satisfaction of this Mortgage and the lien hereof, and any sums at the time held by the Lender for the account of the Borrower pursuant hereto shall be paid over as the Borrower may direct.

24. **Taxes on Mortgage or Note.** In the event of the passage of any law which, for the purposes of taxation, deducts from the value of the Mortgaged Premises any lien thereon and which, in turn, imposes a tax, whether directly or indirectly, on this Mortgage or on the Note, the Borrower shall immediately pay same when due; but if the Borrower is prohibited by law from paying such tax, or reimbursing the Lender for the payment thereof, then, at the option of the Lender and upon sixty (60) days notice thereof, such event shall be treated as if it were an additional "Event of Default" under Paragraph 13 above, except that no prepayment premium (if any) shall become due, nor shall the maturity be accelerated, by reason thereof.

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25. **Disclaimer by Lender.** The Lender shall not be liable to any party for services performed or obligations due in connection with the Loan. The Lender shall not be liable for any debts or claims accruing in favor of any parties against the Borrower or against the Mortgaged Premises. The Borrower is not nor shall be an agent of the Lender for any purposes, and the Lender is not a venture partner with the Borrower in any manner whatsoever. Approvals granted by the Lender 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 deemed solely for the benefit of the Borrower.

26. **Maximum Indebtedness Secured Hereby.** This Mortgage does and shall secure the proceeds of the Loan and all other amounts due the Lender hereunder and under the Note and the Loan Documents as well as any nonobligatory future advances made by the Lender to or for the Borrower; however, at no time shall the total indebtedness secured hereby (excluding accrued interest, advances that are obligatory upon the Lender, or made by the Lender to preserve or restore the Mortgaged Premises, or to preserve the lien or priority of, or to enforce, this Mortgage) exceed an amount equal to 500% of the aforesaid principal amount of the Loan.

27. **Environmental Matters.**

A. The Borrower will not, nor will it allow any other person to, use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the Mortgaged Premises, or transport to or from the Mortgaged Premises, any "**Hazardous Substance**" (as defined herein) in violation of an "**Environmental Law**" (as defined herein);

B. The Mortgaged Premises are now, and will hereafter be kept and maintained, in compliance with Environmental Laws;

C. The Borrower will give written notice to the Lender immediately upon Borrower's discovery of any of the following:

(1) any proceeding or inquiry by a governmental authority, whether local, state or federal, with respect to the presence of any Hazardous Substance on the Mortgaged Premises or the migration thereof from or to other property;

(2) any claim made or threatened against the Borrower or the Mortgaged Premises relating to any loss or injury resulting from any Hazardous Substance; and

(3) any release on any real property adjoining or in the vicinity of the Mortgaged Premises that could cause the Mortgaged Premises or any part thereof to become

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contaminated with, or adversely affected with respect to, any Hazardous Substance;

D. The Lender shall have the right to join and participate in, and as a party if it so elects, any legal proceedings or actions initiated in connection with any Environmental Law and the Borrower shall pay all reasonable attorneys' fees thereby incurred by the Lender in connection therewith;

E. The Borrower will protect, indemnify, defend and hold harmless the Lender, its directors, officers, employees, agents, contractors, attorneys, other representatives, successors and assigns from and against any and all loss, damage, cost, expense or liability, including without limitation court costs and reasonable attorneys' fees, directly arising out of or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of any Hazardous Substance on, under or about the Mortgaged Premises in violation of any Environmental Law, including without limitation (1) all foreseeable damages, and (2) the costs of any required or necessary repair, cleanup or remediation of the Mortgaged Premises required by any Environmental Law, and the preparation and implementation of any closure, remedial or other plans required thereby. The obligations of the Borrower under this Paragraph shall survive any release, satisfaction, termination or extinguishment (and whether by foreclosure or otherwise) of this Mortgage and/or the lien hereof, and notwithstanding the "defeatance" provisions hereof.

F. In the event that any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature whatsoever (the "**Remedial Work**") is necessary under any Environmental Law as mandated by any judicial or administrative order, because of, or in connection with, the presence, suspected presence, release or suspected release of a Hazardous Substance in or into the air, soil, ground water, surface water or soil vapor at, on, about, under or within the Mortgaged Premises, or any portion thereof, the Borrower shall within a reasonable time after written demand for performance thereof by the Lender or under such order, commence and thereafter diligently prosecute to completion all such Remedial Work, failing which without a justification based in law the Lender may but shall not be required to cause the Remedial Work to be performed, and all costs and expenses thereof incurred in connection therewith shall become part of the indebtedness secured hereby. All Remedial Work shall be performed by one or more contractors, approved in advance in writing by the Lender, and under the supervision of a consulting engineer approved in advance in writing by the Lender. All costs and expenses of such

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Remedial Work shall be paid by the Borrower, including, without limitation, the charges of such contractor and the consulting engineer, and the Lender's reasonable costs, expenses and attorneys' fees incurred in connection with the monitoring or review of such Remedial Work.

G. As used herein, the following terms shall have the following meanings:

(1) "**Environmental Law**" means any applicable local, state or federal law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or the environmental conditions on, under or about the Mortgaged Premises, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") as amended, 42 U.S.C. Section 9601 *et seq.*, the Resource Conservation and Recovery Act of 1976 ("RCRA") as amended, 42 U.S.C. Section 6901 *et seq.*, and the Illinois Environmental Protection Act ("IEPA") (415 ILCS 5/1 *et seq.*);

(2) "**Hazardous Substance**" means:

(a) Those substances included within the definition of the term "hazardous substances" in CERCLA and IEPA;

(b) Those substances listed in the United States Department of Transportation Table (49 CFR 172.010 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);

(c) Any material, waste or substance which is (i) petroleum; (ii) asbestos; (iii) polychlorinated biphenyls; (iv) designated as a "hazardous substance" in or pursuant to the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; (v) flammable explosives; or (vi) radioactive material.

28. **Debt Service Coverage Ratio.** At all times during the term of the Loan, the Borrower shall maintain a Debt Service Coverage Ratio of at least 1.25; as used herein, the term "**Debt Service Coverage Ratio**" means the quotient derived when the Net Operating Income (as hereinafter defined) is divided by the Debt Service Payment (as defined below). As used herein, the term "**Net Operating Income**" for any period of time means and includes: (a) all of Borrower's operating gross receipts derived during that period from any and all sources and in any way, manner or respect relating to and/or arising from the Mortgaged Premises and/or the operation thereof (including without limitation rental and leasehold income, expense reimbursements, service income,

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parking income, concession income and other operating income), adjusted by deducting (b) normal and customary operating and maintenance expenses attributable to the Mortgaged Premises (including without limitation costs of ordinary and necessary repair and maintenance, costs of cleaning and janitorial service and supplies, management fees, leasing commissions, costs of utilities, real estate taxes and insurance premiums, and payments of principal or interest other than the Debt Service Payment, but excluding depreciation, partnership or corporate distributions, capital expenditures, state, local or federal income taxes and the Debt Service Payment. As used herein, the term "**Debt Service Payment**" for any period of time means interest and principal payments due the Lender pursuant to the terms of the Note other than as due upon maturity. At the Lender's request, the Borrower shall furnish such evidence, including without limitation certified reports, statements and photocopies of leases, in form and substance reasonably satisfactory to the Lender, as the Lender shall require to verify the Borrower's compliance with the foregoing requirement. The Borrower's failure to supply any such requested information within ten (10) days after the date of the Lender's request for such material, or its failure to maintain (or to secure the Lender as it may require as to any deficiency from time to time between the existing and) the required Debt Service Coverage Ratio, shall constitute an Event of Default hereunder.

29. **Property Manager.** Any property management agreement for the Mortgaged Premises, whether now in effect or entered into hereafter by the Borrower with a property manager, shall contain a "no lien" provision whereby the property manager waives and releases, to the extent permitted by law, any and all lien rights, if any, that it or anyone claiming through or under it may have pursuant to applicable law. At the Lender's request, such property management agreement or a memorandum thereof shall be recorded with the Office of the Recorder of Deeds for each county in which the Mortgaged Premises are located. In addition, the Borrower shall cause the property manager to enter into a subordination agreement with the Lender, in recordable form, whereby the property manager subordinates, to the extent permitted by law, its present and future lien rights and those of any party claiming by, through or under it, to the lien of this Mortgage. The Borrower's failure to require the aforesaid "no lien" provision or subordination agreement shall constitute an Event of Default hereunder.

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30. **Borrower's Additional Representations and Agreements.**

A. Upon the Lender's written request, the Borrower shall confirm in writing to the Lender, or its designee, the amount(s) then due and balance(s) then outstanding under this Mortgage, the Note and the Loan Documents.

B. If the time for payment of part or all of the indebtedness secured hereby be extended at any time or times, if the Note be renewed, modified or replaced, or if any security for the Note be released, the Borrower and all other parties now or hereafter liable for payment of part or all of such indebtedness or interested in the Mortgaged Premises shall be held to consent to such extensions, renewals, modifications, replacements and releases, and their liability and the lien hereof and the Lender's rights hereunder and thereunder shall continue in full force, the right of recourse against all such parties being reserved by the Lender.

C. This Mortgage shall be binding upon the Borrower and its successors and assigns, and all persons claiming under or through the Borrower or any such successor or assign, and shall inure to the benefit of and be enforceable by the Lender and its successors and assigns.

D. The headings in this Mortgage are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

E. If any provision of this Mortgage or the application thereof to any person, party or circumstance shall be invalid or unenforceable under applicable law, such event shall not affect, impair or render invalid or unenforceable the remainder of this Mortgage nor any other provision hereof, nor shall it affect the application of any provision hereof to other persons, parties or circumstances.

F. This Mortgage is executed and delivered at Chicago, Illinois and shall be governed by and construed in accordance with the laws of the State of Illinois. Actions for all disputes shall, at the Lender's option (but subject to any non-waivable venue or forum provisions of applicable law), be commenced in or transferred to such Department (and such Division or District thereof) of the Circuit Court of Cook County as the Lender may select. The Borrower hereby waives, and the Lender hereby reserves, any right now or in the future to remove any such action to the Courts of the United States of America.

G. The Loan is an exempted transaction under the federal Truth-in-Lending Act (15 U.S.C. Section 1601 *et seq.*) and constitutes a business loan under the provisions of Section 4 of the Illinois Interest Act (815 ILCS 205/4).

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H. In the event of a conflict between any provisions of this Mortgage and any provisions of the Note, the provisions designated by the Lender, in its sole discretion, shall prevail.

I. The Lender is hereby subrogated to any mortgage lien or other security interest which is discharged in whole or in part by any of the proceeds of the Loan.

J. This Mortgage may not be amended, modified, or terminated except pursuant to written agreement between the Lender and the Borrower. The Borrower hereby waives notice of the Lender's acceptance hereof.

K. In the event the Lender becomes entitled to foreclose this Mortgage, it may do so by proceeding against any one or more parcels or portions of the subject real estate in a foreclosure action, for the full amount of the indebtedness secured hereby. No foreclosure action, unless recovery of the full amount of such indebtedness is realized thereunder, shall bar or preclude any other foreclosure action, and the Lender may be the purchaser at any resulting foreclosure sale by means of a "credit" bid.

L. Upon the occurrence of any Event of Default, the Lender may at its option complete the construction of the Project and enter into the necessary contracts therefor, in which case all money expended shall be so much additional indebtedness secured hereby, and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest until paid at the Default Rate.

31. **Notices.** Any notice, demand or other communication intended to be given pursuant to the terms hereof (hereafter, "Notice") shall be in writing and shall be delivered by personal service (including private courier service with charges prepaid), or mailed to the following addresses or such other address within the State of Illinois as the party to receive such notice hereafter designates to the other parties by written notice:

If to the Lender:

Lakeside Bank
55 West Wacker Drive
Chicago, Illinois 60601
Attn: Commercial Loan Dept.

If to the Borrower:

c/o Barry Brown
Chicago Harley Davidson, Inc.
6868 North Western Avenue
Chicago, Illinois 60645

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Any such notice shall be deemed given as of the date of its delivery if delivered by personal service, or, if sent by certified or registered mail with postage prepaid and return receipt requested, as of the second business day following the date of its mailing. If the party to receive such notice fails or refuses to accept delivery thereof, or if the bearer thereof is unable to complete such delivery because of an address change for which no notice was given, such notice shall be deemed given as of the date its delivery is first attempted. Personal service upon the Lender shall be valid only if made upon one of its officers.

32. **Single Asset Entity.** The Borrower shall not hold or acquire, directly or indirectly, any ownership interest (legal or equitable) in any real or personal property other than the Mortgaged Premises, or become a shareholder of or a member or partner in any entity which acquires any property other than the Mortgaged Premises, until such time as the obligations and indebtedness under this Mortgage and the Loan Documents have been fully paid performed. The Borrower's Operating Agreement shall limit its purpose to the acquisition, operation, management and disposition of the Mortgaged Premises, and such purpose shall not be amended without the prior written consent of the Lender.

The Borrower hereby covenants: (a) to maintain its assets, accounts, books, records, financial statements, stationery, invoices, and checks separate from and not commingled with any of those of any other person or entity; (b) to conduct its own business in its own name, pay its own liabilities out of its own funds, allocate fairly and reasonably any overhead for shared employees and office space, and to maintain an arm's length relationship with its affiliates; (c) to hold itself out as a separate entity, correct any known misunderstanding regarding its separate identity, maintain adequate capital in light of its contemplated business operations, and observe all organizational formalities; (d) not to guarantee or become obligated for the debts of any other entity or person or hold out its credits as being available to satisfy the obligations of others, including not acquiring obligations or securities of its members; (e) not to pledge its assets for the benefit of any other entity or person or make any loans or advances to any person or entity; (f) not to enter into any contract or agreement with any party which is directly or indirectly controlling, controlled by or under common control with the Borrower (an "Affiliate"), except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other

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than any Affiliate; (g) that neither the Borrower nor any constituent party of the Borrower will seek the dissolution or winding up, in whole or in part, of the Borrower, nor will the Borrower merge with or be consolidated into any other entity; (h) that the Borrower's assets have been and will be maintained in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any of its constituent parties or of any other person; and (i) that the Borrower does not now nor will it hereafter have any debts or obligations other than with respect to this Mortgage, the Loan Documents and the Loan, and normal accounts payable in the ordinary course of business, and that any other debt or obligation of the Borrower has been paid in full, or will be so paid prior to, or from the proceeds of, the initial disbursement of the Loan.

(THE FOLLOWING PAGE IS THE SIGNATURE PAGE)

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

2929 PATRIOT BLVD., L.L.C.

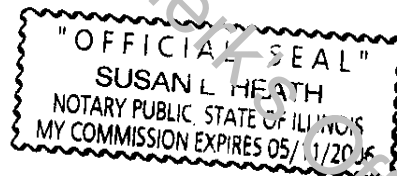
By: Barry Brown
Its: member

Andree Brown
member

STATE OF ILLINOIS
COUNTY OF COOK

The foregoing Instrument was acknowledged before me on October 16, 2002,
by Barry & Andree Brown, the MEMBERS of 2929 PATRIOT BLVD., L.L.C.,
an Illinois limited company, on behalf of the company.

Susan L. Heath
NOTARY PUBLIC



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Lakeside - Brown Ex A v2

EXHIBIT A

Legal Description

PARCEL 1:

LOT 1 IN THE PATRIOT MARKETPLACE SUBDIVISION OF LOT 1 IN THE SUBDIVISION NO. 2 OF GLENVIEW NAVAL AIRSTATION, BEING A SUBDIVISION OF PART OF SECTIONS 15, 21, 22, 23, 26, 27, 28 AND 34, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN; AND ALSO PART OF LOT 4 IN ASSESSOR'S DIVISION OF SECTION 22, TOWNSHIP 42 NORTH, RANGE 12 EAST, OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR INGRESS AND EGRESS OVER CROSS-ACCESS AREAS, AS SET FORTH IN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PATRIOT MARKETPLACE SUBDIVISION, DATED DECEMBER 10, 2001 AND RECORDED JANUARY 8, 2002 AS DOCUMENT 0020026172

PIN: 04-22-100-043

Located at the Northeast Corner of Willow Road and Patriot Boulevard,
Glenview, Illinois

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