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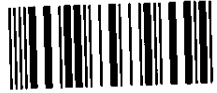
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Cook County Recorder 53.50



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WHEN RECORDED MAIL TO:

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Chicago, Illinois 60603

CL990542

MORTGAGE AND SECURITY AGREEMENT - BRANDENBERRY PARTNERS, L.L.C.

April 3 THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage") is made as of April 3, 2000, by **BRANDENBERRY PARTNERS, L.L.C.** ("Mortgagor"), with a mailing address at c/o GK Development, Inc., 118 Barrington Road, Suite 220, Barrington, Illinois 60010 in favor of **FIRST MIDWEST BANK, NATIONAL ASSOCIATION** ("Mortgagee") with a mailing address of 300 Park Avenue, Suite 400, Itasca, Illinois 60143 and pertains to the real estate described in Exhibit "A", attached hereto and made a part hereof.

I. RECITALS

1.01 Note. Pursuant to that certain Loan and Security Agreement dated the date of this Mortgage entered into by and between Mortgagor and Mortgagee (said Loan and Security Agreement, as may be amended or restated from time to time, shall be hereinafter referred to as the "Loan Agreement"), (A) that certain Term Note (said Term Note, as may from time to time be amended, modified, substituted, restated, renewed and/or extended, shall hereinafter be referred to as the "Term Note") in the principal amount of \$1,760,000.00 payable, along with interest, and maturing as specified in the Term Note (the Term Loan shall hereinafter be referred to individually as the "Note") has been and is being contemporaneously executed and delivered by Mortgagor.

1.02 This Mortgage To induce Mortgagee to (A) enter into the Loan Agreement and (B) make the loans which are the subject of the Note, and as security for the repayment of the Note and payment and performance of all other indebtedness, obligations and liabilities of Mortgagor to Mortgagee pursuant to the Documents (as defined in the Loan Agreement), howsoever created, arising or evidenced, and whether now existing or hereafter arising, including, but not limited to, under the Loan Agreement and any document entered into or given pursuant to the Loan Agreement (all of the indebtedness, liabilities and obligations referenced in this Section shall be collectively referred to as the "Obligations"), Mortgagor has agreed to execute and deliver to Mortgagee this Mortgage. This Mortgage is given as equal security for all of the Obligations without preference or priority of any part of the Obligations by reason of priority of time or of the negotiation thereof or otherwise.

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This Mortgage is given in part to secure the multiple draws permitted, evidenced and witnessed by the Note and the Loan Agreement, and secures not only the indebtedness from Mortgagor and/or Beneficiary existing on the date hereof, but all such future advances, whether such advances are obligatory or to be made at the option of the 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, and although there may be no indebtedness outstanding at the time any advance is made. The lien of this Mortgage as to third persons without actual notice thereof shall be valid as to all indebtedness and future advances from the time this Mortgage is filed for record in the Office of the Recorder of Deeds of the County set forth on Exhibit A attached hereto. The total amount of indebtedness that may be secured by this Mortgage may increase or decrease from time to time, but the total unpaid balances of the Note secured at any one time, shall not exceed the maximum principal amount of the aggregate of the Note (as amended, extended, substituted, restated, replaced or renewed from time to time), plus interest thereon and any disbursements made by the Mortgagee for the payment of taxes, special assessments, or insurance on the above described real estate, with interest on such disbursements.

II. THE GRANT

2.01 Now, therefore, in order to secure the payment and performance of the Obligations and the covenants and agreements herein contained, Mortgagor does hereby grant, bargain, sell, convey, mortgage and warrant to Mortgagee and its successors and assigns forever the real estate, and all of its estate, right, title and interest therein, situated in the state and county as more particularly described in Exhibit A attached hereto and made a part hereof (the "Premises"), together with the following described property (the Premises and the following described property being collectively referred to hereinbelow as the "Property"), all of which other Property is hereby pledged primarily on a parity with the Premises and not secondarily:

- (a) All buildings and other improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration and repair of such improvement now or hereafter erected thereon, all of which materials shall be deemed to be included within the Property immediately upon the delivery thereof to the Premises;
- (b) All right, title, and interest of Mortgagor, including any after-acquired title or reversion, in and to the rights of the ways, streets, avenues, sidewalks, and alleys adjoining the Premises;
- (c) Each and all of the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, other rights, liberties and privileges of the Premises or in any way now or hereafter appertaining thereto, including homestead and any other claim at law or in equity, as well as any after acquired title, franchise or license and the reversions and remainders thereof;
- (d) All rents, issues, deposits and profits accruing and to accrue from the Premises and the avails thereof; and

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- (e) All tenant's security deposits, utility deposits and insurance premium rebates to which Mortgagor may be entitled or which Mortgagor may be holding; all fixtures and personal property now or hereafter owned by Mortgagor and attached to or contained in and used or useful in connection with the Premises or the aforesaid improvements thereon, including, without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, fans, fittings, floor coverings, freezers, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, shipping dock load level, sinks, sprinklers, stokers, stoves, toilets, trash compactor systems, ventilators, wall coverings, washers, wastewater facilities, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same be attached to such improvements, it being intended, agreed and declared that all such property owned by Mortgagor and placed by it on the Premises or used in connection with the operation or maintenance thereof shall, so far as permitted by law, be deemed for the purposes of this Mortgage to be part of the real estate constituting and located on the Premises and covered by this Mortgage, and as to any of the aforesaid property that is not part of such real estate or does not constitute a "fixture" as such term is defined in the Uniform Commercial Code as enacted in the state in which the Property is located, this Mortgage shall be deemed to be, as well, a security agreement under such Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to Mortgagee as "secured party," as such term is defined in such Code;

To Have and to Hold the same unto Mortgagee and its successors and assigns forever for the purposes and uses herein set forth.

III. GENERAL AGREEMENTS

3.01 Principal and Interest. All of the Obligations shall be promptly paid when due at the times and in the manner provided in agreements, documents and instruments evidencing the Obligations.

3.02 Property Taxes. Mortgagor shall pay before delinquent all general taxes, special taxes, special assessments, water charges, sewer charges and any other charges that may be asserted against the Property or any part thereof or interest therein, and shall furnish to Mortgagee, upon Mortgagee's request, duplicate receipts therefor within 30 days after payment thereof. Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes or assessments, provided that:

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- (a) such contest shall have the effect of preventing the collection of the tax or assessment so contested and the sale or forfeiture of the Property or any part thereof or interest therein to satisfy the same; and
- (b) Mortgagor has notified Mortgagee in writing of the intention of Mortgagor to contest the same before any tax or assessment has been increased by any interest, penalties or costs.

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3.03 Tax Payments by Mortgagee. Mortgagee is hereby authorized upon 10 days notice to Mortgagor (or such lesser notice, including no notice, as is reasonable under the circumstances) to make or advance, in the place and stead of Mortgagor, any payment not paid when due relating to (A) taxes, assessments, water and sewer charges, and other governmental charges, fines, impositions or liens that may be asserted against the Property, or any part thereof (except liens being contested in good faith and by appropriate proceedings for which adequate reserves have been established), and may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy thereof or into the validity of any tax, assessment, lien, sale, forfeiture or title or claim relating thereto; or (B) any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, charge or payment otherwise relating to any other purpose herein and hereby authorized, but not enumerated in this Paragraph 3.03 (except liens being contested in good faith and by appropriate proceedings for which adequate reserves have been established), whenever, in its judgment and discretion, such advance seems necessary or desirable to protect the full security intended to be created by this Mortgage. In connection with any such advance, Mortgagee is further authorized, at its option, to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing. All such advances and indebtedness authorized by this Paragraph 3.03 shall constitute additional indebtedness secured hereby and shall become immediately due and payable by Mortgagor to Mortgagee without notice with interest at the highest rate specified in the Note.

3.04 Insurance

(a) Hazard. Mortgagor shall keep the improvements now existing or hereafter erected on the Premises insured under a replacement cost form of insurance policy against loss or damage resulting from fire, windstorm and other hazards as may be reasonably required by Mortgagee (including, but not limited to, flood insurance in an amount necessary to comply with applicable law), and to pay promptly, when due, any premiums on such insurance. Without limitation of the immediately preceding sentence, during construction of any improvements on the Premises, Mortgagor shall maintain "Builders Risk" insurance with extended coverage over fire and other casualties using completed values for the amount of the full insurable value for all such improvements under construction at any time on the Premises, including equipment and materials delivered to the Premises for incorporation into the Property. All such insurance shall be in form and of content, and shall be carried in companies, approved in writing by Mortgagee and naming Mortgagee as an additional insured, and all such policies and renewals thereof (or certificates evidencing the same), marked "paid," shall be delivered to Mortgagee at least 30 days before the expiration of then existing policies and shall have attached thereto standard non-contributing mortgage clauses entitling Mortgagee, as its interest may appear, to collect any and all proceeds payable under such insurance, as well as standard waiver of subrogation endorsements, so long as such subrogation endorsement can be obtained without additional cost to Mortgagor. Mortgagor shall not carry any separate insurance on such improvements concurrent in kind or form with any insurance required hereunder or contributing in the event of loss. In the event of a change in ownership or of occupancy of the Premises approved in writing by Mortgagee, immediate notice thereof by messenger, facsimile or overnight delivery shall be delivered to all such insurers. In the event of any casualty loss, Mortgagor shall give prompt notice thereof to Mortgagee. Mortgagor hereby permits Mortgagee, at Mortgagee's option, to adjust and compromise any such losses under any of the aforesaid insurance and, after deducting any of Mortgagee's reasonable costs of collection, to use, apply, or disburse the balance of such insurance proceeds (i) toward repairing, restoring and rebuilding the aforesaid improvements, provided such repair, restoration or

rebuilding is economically feasible and the security of this Mortgage is not thereby impaired, in which event Mortgagee shall not be obliged to see to the proper application thereof nor shall the amount so released for such purposes be deemed a payment on the indebtedness secured thereby; or (ii) as a credit upon any portion of the indebtedness secured hereby, with the excess, if any, paid to Mortgagor; provided, however, that so long as no Default shall then exist and no Default shall exist at any time during the period of any repair, restoration and/or rebuilding of the aforesaid improvements, and subject to the provisions of the immediately following paragraph, upon Mortgagor's written request to Mortgagee made on or before the disbursement of such insurance proceeds to Mortgagee, such insurance proceeds shall be used to repair, restore and/or rebuild the aforesaid improvements. Unless Mortgagor and Mortgagee otherwise agree in writing, any such application of proceeds to the sums secured by this Mortgage shall not extend or postpone the due date of any portion of the indebtedness secured hereby or change the amount of any installment due on such indebtedness.

To the extent any such insurance proceeds are used toward repairing, restoring and rebuilding such improvements, such proceeds shall be made available, from time to time, upon Mortgagee being furnished with satisfactory evidence of the estimated cost of such repairs, restoration and rebuilding and with such architect's certificates, waivers of lien, certificates, contractors' sworn statements and other evidence of the estimated cost thereof and of payments as Mortgagee may reasonably require and approve, and if the estimated cost of the work exceeds 5% of the original principal amount of the indebtedness secured hereby, with all plans and specifications for such plans, restoration and rebuilding as Mortgagee may reasonably require and approve. Payments made prior to the final completion of the work shall not exceed 90% of the value of the work performed, from time to time, and at all times the undisbursed balance of such proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens. In the event of foreclosure of this Mortgage or other transfer of title to the Premises in extinguishment of the indebtedness secured hereby, all right, title and interest of Mortgagor in and to any such insurance policies then in force, and any claims or proceeds thereunder, shall pass to Mortgagee or any purchaser or grantee thereof. Mortgagee may, at any time in its reasonable discretion, procure and substitute for any and all of such insurance policies, such other policies of insurance, in such amounts, and carried in such companies, as it may select.

(b) Liability. Mortgagor shall carry and maintain such comprehensive public liability and workmen's compensation insurance as may be reasonably required from time to time by Mortgagee in form and of content, in amounts, and with companies approved in writing by Mortgagee and naming Mortgagee as an additional insured; provided, however, that the amounts of liability coverage shall not be less than Two Million Dollars and No Cents (\$2,000,000.00) single limit. Certificates of such insurance, premiums prepaid, shall be deposited with Mortgagee and shall contain provision for 20 days' notice to Mortgagee prior to any cancellation thereof.

3.05 Condemnation and Eminent Domain. Any and all awards heretofore or hereafter made or to be made to the present, or any subsequent, owner of the Property, by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Premises, any improvement located thereon, or any easement thereon or appurtenance thereof (including any award from the United States government at any time after the allowance of a claim therefor, the ascertainment of the amount thereto, and the issuance of a warrant for payment thereof), are hereby assigned by Mortgagor to Mortgagee, which awards Mortgagee is hereby authorized to collect and receive from the condemnation authorities, and Mortgagee is hereby authorized to give appropriate receipts therefor. Mortgagor shall give Mortgagee immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Premises, or any easement thereon or appurtenance thereof (including severance of, consequential damage to, or change in grade of streets), and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further agrees to make, execute and deliver to Mortgagee, at any time upon request, free, clear and discharged of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards and other compensation heretofore and hereafter made to Mortgagor for any taking, either permanent or temporary, under any such proceeding.

3.06 Maintenance of Property. Except for tenant improvements done pursuant to any lease, whether now existing or hereafter arising, of the Property or done in the ordinary course of Mortgagor's business, no substantial building or other improvement on the Premises shall be materially altered, removed or demolished, nor shall any substantial fixtures, chattels or articles of personal property pledged pursuant to this Mortgage on, in, or about the Premises be severed, removed, sold or mortgaged, without the prior written consent of Mortgagee, which consent will not be unreasonably withheld, and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered by this Mortgage, except with the prior written consent of Mortgagee, which consent will not be unreasonably withheld, the same shall be replaced promptly by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from any other security interest therein, encumbrances thereon, or reservation of title thereto. Mortgagor shall promptly repair, restore or rebuild any building or other improvement now or hereafter situated on the Premises that may become damaged or be destroyed; provided, however, that if (a) insurance proceeds are available due to any such damage or destruction and such insurance proceeds have been paid to Mortgagee and (b) Mortgagor has requested the use of such insurance proceeds pursuant to the provisions of Section 3.04(a) of this Mortgage and (c) no Default has occurred, then Mortgagor shall only be required to repair, restore or rebuild such damage or destruction if it has received the use of such insurance proceeds. Any such building or other improvement shall be so repaired, restored or rebuilt so as to be of at least equal value and of substantially the same character as prior to such damage or destruction. Mortgagor further agrees not to permit, commit or suffer any waste, impairment or deterioration of the Property or any part thereof; to keep and maintain the Property and every part thereof in good repair and condition; to effect such repairs as Mortgagee may reasonably require and, from time to time, to make all necessary and proper replacements thereof and additions thereto so that the Premises and such buildings, other improvement, fixtures, chattels and articles of personal property will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed.

3.07 Compliance with Laws. Mortgagor shall comply in all material respects with all statutes, ordinances, regulations, rules, orders, decrees and other requirements relating to the Property or any part thereof by any federal, state or local authority; and shall observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, without limitation, zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions that are applicable to the Property or that have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Property.

3.08 Liens and Transfers. Without Mortgagee's prior written consent, Mortgagor shall neither sell, transfer, convey, assign, hypothecate or otherwise transfer the title to or any beneficial interest in all or any portion of the Property, whether by operation of law, voluntarily, or otherwise, contract to do any of the foregoing, nor create, suffer or permit to be created or filed against the Property or any part thereof hereafter any mortgage lien or other lien on the Property; provided, however, that Mortgagor may, within 10 days after receipt of the notice of the filing thereof, contest any lien claim arising from any work performed, material furnished, or obligation incurred by Mortgagor upon furnishing Mortgagee security and indemnification or setting aside reserves satisfactory to Mortgagee for the final payment and discharge thereof. Without limiting the generality of the foregoing, any sale, conveyance, assignment, hypothecation or transfer prohibited in the Loan Agreement shall be deemed a sale, conveyance, assignment, hypothecation or other transfer prohibited by the foregoing sentence. Any waiver by Mortgagee of the provisions of this Paragraph 3.08 shall not be deemed to be a waiver of the right of Mortgagee in the future to insist upon strict compliance with the provisions hereof.

3.09 Subrogation to Prior Lienholder's Rights. If the proceeds of the indebtedness secured hereby, any part thereof, or any amount paid out or advanced by Mortgagee is used directly or indirectly to pay off, discharge or satisfy in whole or in part, any prior lien or encumbrance upon the Property or any part thereof, then Mortgagee shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

3.10 Mortgagee's Dealings with Transferee. In the event of the sale or transfer, by operation

of law, voluntarily or otherwise, of all or any part of the Property, or of any beneficial interest therein prior to the satisfaction of the Obligations, Mortgagee shall be authorized and empowered to deal with the vendee or transferee with regard to (a) the Property or any beneficial interest therein; (b) the indebtedness secured hereby; and (c) any of the terms or conditions hereof as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from its covenants hereunder.

3.11 Stamp Taxes. If at any time the United States government, or any federal, state, county or municipal governmental subdivision, requires or imposes Internal Revenue or other documentary stamps, levies, or any tax on this Mortgage or on the Obligations, then, to the extent Mortgagee has or will make any payment related thereto and to the greatest extent permitted by law, such indebtedness shall be and become due and payable by Mortgagor to Mortgagee 30 days after the mailing by Mortgagee of notice of such indebtedness to Mortgagor.

3.12 Change in Laws. In the event of the enactment, after the date of this Mortgage, of any law of the state in which the Premises are located imposing upon Mortgagee the payment of all or any part of the taxes, assessments, charges, or liens hereby required to be paid by Mortgagor, or changing in any ways the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagor's interest in the Property, or the manner of collection of taxes, so as to affect this Mortgage or the indebtedness secured hereby or the holder thereof, then Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges or liens or reimburse Mortgagee therefor; provided, however, that if, in the opinion of counsel for Mortgagee, it might be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to become due and payable within 60 days after the giving of such notice; provided, further, that nothing contained in this Paragraph shall be construed as obligating Mortgagor to pay any portion of Mortgagee's federal income tax.

3.13 Inspection of Property. Mortgagor shall permit Mortgagee and its representatives and agents, upon reasonable notice, to inspect the Property from time to time during normal business hours and as frequently as Mortgagee considers reasonable. Mortgagee shall take all reasonable acts necessary to not interfere with the operation of the business of any tenant of the Premises.

3.14 Inspection of Books and Records. Mortgagor shall keep and maintain such books and records as required by the Mortgagee and shall permit Mortgagee reasonable access to and rights of inspection of said books and records during normal business hours.

3.15 Environmental Conditions. Mortgagor hereby represents and warrants to Mortgagee that, except as set forth in the Environmental Audit (as defined in the Loan Agreement) no hazardous or toxic substances, within the meaning of any applicable statute or regulation, whether federal, state or local, are presently stored or otherwise located on the Property, and to the best of its knowledge, on any adjacent parcel of real estate, except in accordance with all applicable laws, regulations and rules.

Mortgagor covenants and agrees that all hazardous and toxic substances within the definition of any applicable statute, regulation or rule (whether federal, state or local), which may be used by any person for any purpose upon the Property, shall be used or stored thereon only in a safe, approved manner, in accordance with all industrial standards and all laws, regulations, and requirements for such storage promulgated by any governmental authority, that the Property will not be used for the principal purpose of storing such substances, and that no such storage or use will otherwise be allowed on the Property which cause or which will increase the likelihood of causing the release of such substances onto the Property. Upon the written request of Mortgagee to Mortgagor, Mortgagee, its attorneys, employees, agents or other persons or entities designated by Mortgagee shall, from time to time, and at any time, for cause be allowed to enter upon the Property and conduct environmental examinations and environmental audits of the Property, all in form, manner and type as Mortgagee may then require in its sole discretion. Mortgagor shall fully cooperate and make the Property available to Mortgagee at such times as Mortgagee may reasonably request in order to conduct such environmental examinations and environmental audits.

Mortgagor hereby agrees to give prompt notice of any violation of any federal, state or local statute, rule or regulation dealing with the presence or suspected presence of any hazardous or toxic substances or conditions affecting the Property. Mortgagor covenants and agrees to promptly contain and clean up any and all releases of hazardous substances on the Property to the extent required by law. Notwithstanding any language or provision of this Mortgage to the contrary, Mortgagor hereby unconditionally gives the Mortgagee the right, but not the obligation, and Mortgagee does not so obligate itself, to undertake to contain and clean up releases of hazardous substances on the Property. Mortgagor hereby indemnify and saves Mortgagee harmless of and from any and all loss, costs (including reasonable attorneys' fees), liability and damage whatsoever incurred by Mortgagee, by reason of any violation of any applicable statute, rule or regulation for the protection of the environment which occurs upon the Property or by reason of the imposition of any governmental lien for the recovery of environmental clean-up costs related to the Property expended by reason of such violation; provided that, to the extent that Mortgagee is strictly liable under any such statute, Mortgagor's obligation to Mortgagee under this indemnity shall likewise be without regard to fault on the part of Mortgagor with respect to the violation of law which results in liability to the Mortgagee. Mortgagor further agrees that this indemnity (A) is not in any manner limited due to any knowledge of Mortgagee from time to time of any environmental issue relating to the Property (including, but not limited to, any information contained in the Environmental Audit); and (B) shall continue and remain in full force and effect beyond the term of the indebtedness or obligation which is secured by this Mortgage and shall be terminated only when there is no further obligation of any kind whether in law or in equity or otherwise of Mortgagee in connection with any such environmental clean-up costs, environmental liens, or environmental matters involving the Property.

3.16 Acknowledgment of Debt. Mortgagor shall furnish from time to time, a written statement, duly acknowledged, specifying the amount due under the Note and this Mortgage and disclosing whether any alleged offsets or defenses exist against the indebtedness secured hereby.

3.17 Other Amounts Secured. At all times, this Mortgage secures in addition to the Note, any other amounts as provided herein; provided, however, that in no event shall the aggregate principal indebtedness secured by this Mortgage exceed the aggregate original principal amount of the Note, multiplied by a factor of three.

3.18 Assignments of Rents and Leases. Mortgagor hereby assigns, transfers and sets over unto Mortgagee all the rents, fees or payments now or hereafter due, under or by virtue of any lease, either oral or written, or any letting of, or any agreement for the use or occupancy of any part of the Property, whether heretofore, now or hereafter agreed to and all leases and modifications thereof, now existing or hereafter made relating to the Property; together with the right to let and relet the Property or any part thereof, in Mortgagee's sole discretion, and to do anything with respect to the Property as Mortgagor might do. Any proceeds received hereunder may be applied by Mortgagee as otherwise provided in Paragraph 4.08 of this Mortgage. Mortgagor hereby directs all tenants, lessees and occupants of the Property to pay all rental, payments or fees for use and occupancy of the Property in accordance herewith. Mortgagee agrees not to exercise its rights granted in this Paragraph 3.18 until a Default, as hereafter defined, shall have occurred. Mortgagor shall execute, acknowledge, and deliver to Mortgagee, within 10 days after request by Mortgagee, such assignment of rent documents required by Mortgagee, in form and of content satisfactory to Mortgagee. Mortgagor further agrees to pay to Mortgagee all costs and expenses incurred by Mortgagee in connection with the preparation, execution and recording of any such document.

3.19 Declaration of Subordination. At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Property upon the execution by Mortgagee and recording thereof, at any time hereafter, in the appropriate official records of the County in which the Premises are located of a unilateral declaration to that effect.

3.20 Security Instruments. Mortgagor shall execute, acknowledge and deliver to Mortgagee, within 5 days after request by Mortgagee, a security agreement, financing statements and any other similar security instrument required by Mortgagee, in form and of content satisfactory to Mortgagee, covering all property of any kind whatsoever owned by Mortgagor that, in the reasonable opinion of Mortgagee, is

essential to the operation of the Property and concerning which there may be any doubt whether title thereto has been conveyed, or a security interest therein perfected, by this Mortgage under the laws of the State of Illinois. Mortgagor shall further execute, acknowledge and deliver any financing statement, affidavit, continuation statement, certificate, or other document as Mortgagee may reasonably request in order to perfect, preserve, maintain, continue, and extend such security instruments. Mortgagor further agrees to pay to Mortgagee all costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing and refiling of any such documents.

3.21 Releases. Mortgagee, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens thereon, may release from the lien all or any part of the Property, or release from liability any person obligated to repay any indebtedness secured hereby, without in any way affecting the liability of any party to the Note or this Mortgage, and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party liable therefor to extend the time for payment of any part or all of such indebtedness. Any such agreement shall not in any way release or impair the lien created by this Mortgage or reduce or modify the liability of any person or entity obligated personally to repay the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest, subject to the indebtedness secured hereby, in the Property.

3.22 Interest Laws. Mortgagor hereby warrants and represents that the proceeds of the Note will be paid to an entity and/or used for the purposes specified in Section 205/4(1)(l) of Chapter 815, of the Illinois Compiled Statutes and that the principal obligations secured hereby constitutes a business loan which comes within the purview and operation of such paragraph. It being the intention of Mortgagee and Mortgagor to comply with the laws of the State of Illinois, it is agreed that notwithstanding any provision to the contrary in the Note or this Mortgage, no such provision shall require the payment or permit the collection of any amount ("Excess Interest") in excess of the maximum amount of interest permitted by law to be charged. In determining whether or not any Excess Interest is provided for, the provisions contained in the Note with respect to such determination shall control. If any Excess Interest is provided for, or is adjudicated to be provided for, in the Note or this Mortgage, then in such event (a) the provisions of this Paragraph 3.22 shall govern and control; (b) Mortgagor shall not be obligated to pay any Excess Interest; and (c) any Excess Interest that Mortgagee may have received hereunder shall, at the option of Mortgagee, be (i) applied as a credit against the then unpaid principal balance under the Note, or accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing.

3.23 Waiver of Statutory Rights. To the greatest extent permitted by law, (a) Mortgagor shall not apply for or avail itself of any appraisal, valuation, redemption, stay, extension or exemption laws, or any so-called "moratorium laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws; and (b) Mortgagor, for itself, any and all persons or entities who may claim through or under it and each and every person or entity acquiring any interest in the Property or title to the Premises subsequent to the date of this Mortgage, hereby also waives (i) any and all rights to have the Property and estates comprising the Property marshaled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may order the Property sold in its entirety; and (ii) any and all rights of (1) redemption from sale under any order or decree of foreclosure of the lien hereof pursuant to the rights herein granted; and (2) homestead in the Premises which Mortgagor may now or hereafter have under the laws of the state in which the Property is located; and (iii) all rights to void liens under Section 506 of the United States Bankruptcy Code (11 U.S.C. §506), or any amendment or successor thereto.

IV. DEFAULTS AND REMEDIES

4.01 Events Constituting Defaults. Each of the following events shall constitute a default (a "Default") under this Mortgage:

- (a) Mortgagor shall default for a period of 5 days (except

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for the payment due on the maturity date of the Note) in the payment when due of any amount due and owing to Mortgagee under the Note; or

- (b) Except for the default set forth in clause (a) above, default (and continuance thereof for 5 days after written notice thereof to Mortgagor by Mortgagee) in the payment of any of the other Obligations; or
- (c) Any representation or warranty made by Mortgagor in this Mortgage shall at any time prove to have been incorrect in any material respect when made; or
- (d) Mortgagor shall default in the performance or observance of any term, covenant, condition or agreement to be performed by Mortgagor under this Mortgage (not constituting a Default under any other clause of this Section 4.01) and such default shall continue unremedied for 30 days after written notice thereof shall have been given by Mortgagee to Mortgagor; provided, however, so long as Mortgagor (i) has commenced all necessary actions to cure the default referred to in such notice within such 30 day period and (ii) continues to diligently and in good faith make all efforts necessary to cure such default described in such notice, no Default pursuant to this clause (d) shall occur due to the default described in such notice for 60 days following the sending of such notice by Mortgagee to Mortgagor; provided, further, if during the 1 year period immediately preceding the sending of such notice, Mortgagee has given Mortgagor written notice of substantially the same default, then the provisions of the immediately preceding proviso of this subsection (d) shall be of no force and effect; or
- (e) Any default or event of default (howsoever such terms are defined) under the Loan Agreement, the Note, or any of the Documents (as defined in the Loan Agreement) shall occur.

4.02 Acceleration of Maturity. At any time during the existence of any Default, and at the option of Mortgagee, the entire principal amount then outstanding under the Note, and all other sums due from Mortgagor under this Mortgage shall without notice become immediately due and payable.

4.03 Foreclosure of Mortgage. Upon occurrence of any Default, or at any time thereafter, in addition to any and all other remedies available to Mortgagee under applicable law, Mortgagee may proceed to foreclose the lien of this Mortgage by judicial proceedings in accordance with the laws of the state in which the Property is located. Any failure by Mortgagee to exercise such option shall not constitute a waiver of its right to exercise the same at any other time.

4.04 Mortgagee's Continuing Remedies. The failure of Mortgagee to exercise either or both of its remedies to accelerate the maturity of the indebtedness secured hereby and/or to foreclose the lien hereof following any Default as aforesaid, or to exercise any other remedy granted to Mortgagee hereunder or under applicable law in any one or more instances, or the acceptance by Mortgagee of partial payments of such indebtedness, shall neither constitute a waiver of any such Default or of Mortgagee's remedies

hereunder or under applicable law nor establish, extend or affect any grace period for payments due under the Note, but such remedies shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Mortgagee, may at Mortgagee's option be rescinded by written acknowledgment to that effect by Mortgagee and shall not affect Mortgagee's right to accelerate maturity upon or after any future Default.

4.05 Litigation Expenses. In any proceeding to foreclose the lien of this Mortgage or enforce any other remedy of Mortgagee under the Loan Agreement, the Note or this Mortgage, or in any other proceeding whatsoever in connection with any of the Property in which Mortgagee is named as a party, there shall be allowed and included, as additional indebtedness in the judgment or decree resulting therefrom, all expenses paid or incurred in connection with such proceeding by or on behalf of Mortgagee constituting attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, survey costs and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and any similar data and assurances with respect to title to the Premises as Mortgagee may deem reasonably necessary either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to such judgment the true condition of the title to or value of the Premises or the Property. All expenses of the foregoing nature, and such expenses as may be incurred in the protection of any of the Property and the maintenance of the lien of this Mortgage thereon, including without limitation the fees of any attorney employed by Mortgagee in any litigation affecting the Note, this Mortgage, or any of the Property, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith, shall be immediately due and payable by Mortgagor.

4.06 Performance by Mortgagee. In the event of any Default, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and Mortgagee may, but need not, make full or partial payments of principal or interest on encumbrances, if any; purchase, discharge, compromise, or settle any tax lien or other prior or junior lien or title or claim thereof; redeem from any tax sale or forfeiture affecting the Property; or contest any tax or assessment thereon. All monies paid for any of the purposes authorized herein and all expenses paid or incurred in connection therewith, including attorney's fees, and any other monies advanced by Mortgagee to protect the Property and the lien of this Mortgage, shall be additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee without notice, with interest at the highest rate specified in the Note. Inaction of Mortgagee shall never be construed to be a waiver of any right accruing to it by reason of any default by Mortgagor.

4.07 Right of Possession. In any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, whether or not the entire principal sum secured hereby becomes immediately due and payable as aforesaid, or whether before or after the institution of proceedings to foreclose the lien hereof or before or after sale thereunder, Mortgagor shall, forthwith upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of, the Property or any part thereof, personally or by its agent or attorneys, and Mortgagee, in its discretion, may enter upon and take and maintain possession of all or any part of the Property, together with all documents, books (or copies thereof), records (or copies thereof), papers, and accounts of Mortgagor or the then owner of the Property relating thereto, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom and may, as attorney-in-fact or agent of Mortgagor or such owner, or in its own name as Mortgagee and under the powers herein granted:

- (a) hold, operate, manage, and control all or any part of the Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its sole and arbitrary discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;

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- (b) cancel or terminate any lease or sublease of all or any part of the Property for any cause or on any ground that would entitle Mortgagor to cancel the same;
- (c) elect to disaffirm any lease or sublease of all or any part of the Property made subsequent to this Mortgage or subordinated to the lien hereof;
- (d) extend or modify any then existing leases and make new leases of all or any part of the Property, all on commercially reasonable terms, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the loan evidenced by the Note and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness secured hereby, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser; and
- (e) make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments and improvements in connection with the Property as may reasonably necessary, to insure and reinsure the Property and all risks incidental to Mortgagee's possession, operation, and management thereof, and to receive all rents, issues, deposits, profits and avails therefrom.

4.08 Priority of Payments. Any rents, issues, deposits, profits, and avails of the Property received by Mortgagee after taking possession of all or any part of the property, or pursuant to any assignment thereof to Mortgagee under the provisions of this Mortgage, shall (unless otherwise required pursuant to order of court) be applied in payment of or on account of the following, in the order listed:

- (a) operating expenses of the Property (including reasonable compensation to Mortgagee, any receiver of the Property, any agent or agents to whom management of the Property has been delegated, and also including lease commissions and other compensation for and expenses of seeking and procuring tenants and entering into leases, establishing claims for damages, if any, and paying premiums on insurance hereinabove authorized);
- (b) taxes, special assessments, and water and sewer charges now due or that may hereafter become a lien thereon prior to the lien of this Mortgage;

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- (c) any and all reasonable repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Property (including, without limitation, the cost of placing the Property in such condition as will, in the judgment of Mortgagee or any receiver, make it readily rentable or salable);
- (d) any indebtedness secured by this Mortgage or any deficiency that may result from any foreclosure sale pursuant hereto; and
- (e) any remaining funds to Mortgagor or its successors or assigns, as their interests and rights may appear.

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4.09 Appointment of Receiver. Upon or at any time after the filing of any complaint to foreclose the lien of this Mortgage, the court may, upon application, appoint a receiver of the Property. Such appointment may be made either before or after foreclosure sale, without notice; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby; without regard to the value of the Property at such time and whether or not the same is then occupied as a homestead; and without bond being required of the applicant. Such receiver shall have the power to take possession, control and care of the Property and to collect all rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and, in the event of a sale and a deficiency where Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Mortgagor or its devisees, legatees, heirs, executors, administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Property during the whole of any such period. To the extent permitted by law, such receiver may be authorized by the court to extend or modify any then existing leases and to make new leases of the Property or any part thereof, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured hereby, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree, or issuance of certificate of sale or deed to any purchaser.

4.10 Foreclosure Sale. In the event of any foreclosure sale of the Property, the same may be sold in one or more parcels. Mortgagee may be the purchaser at any foreclosure sale of the Property or any part thereof.

4.11 Application of Proceeds. The proceeds of any foreclosure sale of the Property, or any part thereof, shall be distributed and applied in the following order of priority: (a) on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 4.05 hereof; (b) all other items that, under the terms of this Mortgage, constitute secured indebtedness additional to that evidenced by the Note; (c) all indebtedness remaining unpaid under the Note; and (d) the balance to Mortgagor or its successors or assigns, as their interests and rights may appear.

4.12 Application of Deposits. In the event of any Default, Mortgagee may, at its option, without being required to do so, apply any money or securities that constitute deposits made to or held by Mortgagee or any depository pursuant to any of the provisions of this Mortgage toward payment of any of Mortgagor's obligations under the Note or this Mortgage in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Property. Such deposits are hereby pledged as additional security for the prompt payment of the indebtedness evidenced by the Note and any other indebtedness

secured hereby and shall be held to be applied irrevocably by such depository for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor.

4.13 Remedies Severable and Cumulative. All provisions contained herein pertaining to any remedy of Mortgagee shall be and are severable and cumulative, and the holder of the Obligations hereby may recover judgment hereon, issue execution therefor, and resort to every other right or remedy available at law or in equity without first exhausting and without affecting or impairing the security or any right or remedy afforded hereby.

4.14 Rent. During the continuance of any Default and if Mortgagee or any judicially appointed representative has a right to exclude Mortgagor from all or any part of the Property, Mortgagor agrees to pay the fair and reasonable rental value for the use and occupancy of the Property, or any portion thereof which are in its possession and being occupied for such period and, upon default of any such payment, will vacate and surrender possession of the Property to Mortgagee or to a receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery or possession of premises for non-payment of rent, however designated.

V. MISCELLANEOUS

5.01 Notices. Any notice that Mortgagee or Mortgagor may desire or be required to give to the other shall be in writing, personally delivered, or sent by facsimile machine or sent by overnight courier, to the intended recipient thereof at its address hereinabove set forth or at such other address as such intended recipient may, from time to time, by notice in writing, designate to the sender pursuant hereto. Any such notice shall be deemed to have been delivered 1 business day after being sent by overnight courier or on the day that such writing is delivered in person or sent by facsimile machine to an officer of Mortgagee or Mortgagor (as the case may be). Except as otherwise specifically required herein, notice of the exercise of any right or option granted to Mortgagee by this Mortgage is not required to be given.

5.02 Covenants Run with Land. All of the covenants of this Mortgage shall run with the land constituting the Premises.

5.03 Governing Law. The validity and interpretation of this Mortgage shall be governed and construed in accordance with the laws of the state in which the Property is located. To the extent that this Mortgage may operate as a security agreement under the Uniform Commercial Code, Mortgagee shall have all rights and remedies conferred therein for the benefit of a secured party, as such term is defined therein.

5.04 Severability. If any provision of this Mortgage, or any paragraph, sentence, clause, phrase, or word, or the application thereof, in any circumstance, is held invalid, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included herein.

5.05 Non-Waiver. Unless expressly provided in this Mortgage to the contrary, no consent or waiver, express or implied, by Mortgagee to or of any breach or default by Mortgagor in the performance by Mortgagor of any obligations contained herein shall be deemed a consent to or waiver by Mortgagee of such performance in any other instance or any other obligations hereunder.

5.06 Headings. The headings of sections and paragraphs in this Mortgage are for convenience or reference only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

5.07 Grammar. As used in this Mortgage, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

5.08 Deed in Trust. If title to the Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any lien on the Property shall be construed as a similar prohibition or restriction against the creation of any lien on or

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security interest in the beneficial interest or power of direction of such trust.

5.09 Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Mortgagor, and its successors, assigns, legal representatives and all other persons or entities claiming under or through Mortgagor and the word "Mortgagor," when used herein, shall include all such persons and entities and any others liable for the payment of the indebtedness secured hereby or any part thereof, whether or not they have executed the Note or this Mortgage. The word "Mortgagee," when used herein, shall include Mortgagee's successors, assigns, and legal representatives, including all other holders, from time to time, of the Note.

5.10 Release. Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon presentation of satisfactory evidence that all indebtedness secured by this Mortgage has been fully paid.

5.11 Fees and Expenses. Mortgagor shall pay all of the reasonable and necessary fees and expenses of Mortgagee with respect to the preparation of this Mortgage, the Note and any other documents, instruments or agreements deemed necessary by Mortgagee in connection with this transaction, including, without limitation, reasonable attorneys' fees.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed as of the date hereinabove first written.

BRANDENBERRY PARTNERS, L.L.C.

By:  _____

Title: Managing Member

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, JEFFREY JAY LEVIN, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that ~~CAROL ANTONINI~~ managing member of Brandenberry Partners, L.L.C. personally is known to me to be the same person whose name is subscribed to the foregoing instrument as such Managing Member and appeared before me this day in person and acknowledged that such person signed and delivered the said instrument as such person's own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 3rd day of April, 2000.

Jeffrey Jay Levin
NOTARY PUBLIC

My Commission Expires:

[SEAL]



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EXHIBIT A

LEGAL DESCRIPTION

Unit No. 5 Brandenberry Park East by Zale being a Subdivision of the Southeast $\frac{1}{4}$ of Section 21, Township 42 North, Range 11 East of the Third Principal Meridian (excepting therefrom that part described as follows): commencing at the Southeast Corner of said Unit 5; thence West on the South line of said Unit 25.00 feet to the point of beginning of this exception; thence continuing West on the South line of said Unit 149.25 feet to the Southwest corner of said Unit; thence Northwesterly on the Southwesterly line of said Unit 152.0 feet; thence North at right angles to the Southwesterly line of said Unit 80.0 feet to its intersection with a line 160.52 feet North of and parallel to the South line of said Unit; thence East on said parallel line 81.89 feet to its intersection with a line 134.15 feet Northeasterly of and parallel with the Southwesterly line of said Unit; thence Southerly on said parallel line 170.17 feet; thence South 48.0 feet to the place of beginning in Cook County, Illinois.

PIN Number: 03-21-402-013

Commonly known as Brandenberry Shopping Center, Camp McDonald and Rand Roads, Arlington Heights, Illinois

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