

1998-05-06 14:41:24
Cook County Recorder



THIS INSTRUMENT PREPARED
BY AND RETURN TO:
GARY L. PLOTNICK
Schain, Firsel & Burney, Ltd.
222 North LaSalle Street
Suite 1910
Chicago, Illinois 60601

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

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THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, AND SECURITY AGREEMENT is made this _____ day of April, 1998, between SHEFFIELD PARTNERS, L.L.C., an Illinois limited liability company ("Mortgagor") and MANUFACTURERS BANK, an Illinois chartered banking institution, having its principal office at 1200 North Ashland Avenue, Chicago, Illinois 60622 ("Lender").

WHEREAS, Mortgagor is indebted to Lender in the principal sum of ONE MILLION SIX HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,600,000.00), which indebtedness is evidenced by Maker's note dated of even date herewith and all modifications, substitutions, extensions and renewals thereof ("Note") providing for repayment of principal and interest and providing for a final payment of all sums due thereunder on April 30, 1999. All obligors on the Note are collectively referred to herein as "Maker".

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all charges provided herein and all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage, and the performance of the covenants and agreements contained herein and in the Note, all future advances and all other indebtedness of Mortgagor to Lender whether now or hereafter existing (collectively, the "Secured indebtedness" or "Indebtedness") and also in consideration of Ten Dollars (\$10.00), the receipt and sufficiency whereof is acknowledged, Mortgagor does hereby convey, grant, mortgage and warrant to Lender the real estate ("Real Estate") located in the County of Cook, State of Illinois and described on Exhibit "A" attached hereto, subject only to covenants, conditions, easements and restrictions set forth on Exhibit "B", if any, ("Permitted Encumbrances"). The Real Estate has the common address of 1945 North Sheffield, Chicago, Illinois ("Property Address");

TOGETHER WITH all buildings, structures, improvements, tenements, fixtures, easements, mineral, oil and gas rights, water rights, appurtenances thereunto belonging, title or reversion in any parcels, strips, streets and alleys adjoining the Real Estate, any land or vaults lying within any street, thoroughfare, or alley adjoining the Real Estate, and any privileges, licenses, and franchises pertaining thereunto, all of the foregoing now or

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hereafter acquired, all leasehold estates and all rents, issues and profits thereof, for so long and during all such times as Mortgagor, its successors and assigns may be entitled thereto, all the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to (i): proceeds of insurance in effect with respect to the Property (as hereinafter defined) and (ii) any and all awards, claims for damages, settlements and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Property, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (collectively "Awards") (which are pledged primarily and on a parity with the Real Estate and not secondarily), and (iii) all contracts, plans and specifications for improvements (whether now or hereafter existing) to the Property (including without limitation the "Plans" as defined in the Construction Loan Agreement of even date herewith), and (iv) all contracts (whether now or hereafter existing) for sale of the Property or any condominium unit thereof (including without limitation the Sales Contracts, as defined in the Loan Agreement), and (v) any rights of Mortgagor under any Declaration of Condominium relating to the Premises, whether now or hereafter existing, and (vi) all apparatus, equipment or articles now or hereafter located thereon used to supply heat, gas, air conditioning, water, light, power, refrigeration (whether single units or centrally controlled), and ventilation, and any other apparatus, equipment or articles used or useful in the operation of the Property including all additions, substitutions and replacements thereof. All of the foregoing are declared to be a part of the Real Estate whether physically attached or not, and it is agreed that all similar apparatus, equipment, articles and fixtures hereafter placed on the Real Estate by Mortgagor or its successors or assigns shall be considered as constituting part of the Real Estate. (All of the foregoing, together with the Real Estate (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property" or the "Premises").

To have and to hold the Property unto the Lender, its successors and assigns forever, for the purposes and uses set forth herein, free from all rights and benefits under any Homestead Exemption laws of the state in which the Property is located, which rights and benefits Mortgagor does hereby expressly release and waive.

Mortgagor and Lender covenant and agree as follows:

1. **Payment of Principal and Interest.** Mortgagor shall promptly pay or cause to be paid when due all Secured Indebtedness.

2. **Funds for Taxes and Insurance.** Subject to applicable law, if requested by Lender, Mortgagor shall thereafter pay or cause to be paid to Lender on the day monthly payments of principal and/or interest are payable under the Note, until the Note is paid in full, the following amounts (collectively "Funds"): (i) a sum equal to all general and special real estate and property taxes and assessments (including condominium and planned unit development assessments, if any) and ground rents on the Property, if any (collectively "Impositions") next due on the Property, all as estimated by Lender, divided by the whole number of months to elapse before the month prior to the date when such Impositions will become due and payable; provided, however, that in the case of the first such deposit, there shall be deposited in addition an amount which, when added to the aggregate amount of monthly sums next payable under this subparagraph (i), will result in

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a sufficient reserve to pay the Impositions next becoming due one (1) month prior to the date when such Impositions are, in fact, due and payable, plus (ii) a sum equal to an installment of the premium or premiums that will become due and payable to renew the insurance required in Paragraph 6, each installment to be in such an amount that the payment of approximately equal installments will result in the accumulation of a sufficient sum of money to pay renewal premiums for such insurance at least one (1) month prior to the expiration or renewal date or dates of the policy or policies to be renewed, if any, all as are reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof.

The Funds shall be held by Lender or, at Lender's election, in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency ("depository account"). Lender shall apply the Funds to pay the Impositions, except that upon the occurrence of an Event of Default (as defined below), Lender may apply the Funds to the Secured Indebtedness as Lender sees fit. Lender shall not be required to pay any interest or earnings on the Funds unless otherwise required by law, in which case, all interest shall accrue in the depository account and Lender may charge for so holding and applying the Funds, analyzing the account or verifying and compiling assessments and bills. Upon Mortgagor's request, Lender shall provide to Mortgagor an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit was made. The Funds are pledged as additional security for the sums secured by this Mortgage. The Funds are for the benefit of Mortgagor and Lender only and no third party shall have any right to or interest in the Funds or the application thereof.

If the amount of Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of Impositions, shall exceed the amount required to pay said Impositions and insurance premiums as they fall due, such excess shall be retained by Lender or in the depository account and credited to subsequent monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay the Impositions and insurance premiums as they fall due, Mortgagor shall immediately pay or cause to be paid to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Upon payment in full of all Secured Indebtedness, Lender shall promptly refund to Mortgagor, or to any person to whom Mortgagor directs, any Funds held by Lender. If, under Paragraph 18, the Property is sold or are otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the Secured Indebtedness.

3. **Application of Payments.** Unless prohibited by applicable law, all payments received by Lender under this Mortgage, the Note, the Construction Loan Agreement ("Loan Agreement") and all other documents given to Lender to further evidence, secure or guarantee the Secured Indebtedness (collectively, the "Loan Documents") shall be applied by Lender first to payments required from Mortgagor to Lender under Paragraph 2, then to any sums advanced by Lender pursuant to Paragraph 8 to protect the security of this Mortgage, then to interest payable on the Note and to any prepayment premium which may be due, and then to Note principal (and if principal is due in installments, application shall be to such installments in the inverse order of their maturity).

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Any applications to principal or proceeds from insurance policies, as provided in Paragraph 6, or of condemnation awards, as provided in Paragraph 10, shall not extend or postpone the due date of any monthly installments of principal or interest, or change the amount of such installments or of the other charges or payments provided in the Note or other Loan Documents.

4. **Prior Encumbrances; Liens.** Mortgagor shall perform all of Mortgagor's obligations under any mortgage, deed of trust or other security agreement (collectively "Prior Encumbrances") creating a lien having priority over this Mortgage, including Mortgagor's covenants to make payments when due. Any act or omission of Mortgagor which, with the giving of notice or the passage of time would constitute a default or event of default under any Prior Encumbrance or under any ground lease shall be an Event of Default under this Mortgage. Mortgagor shall promptly deliver to Lender all notices given or received of any defaults or events of default under any Prior Encumbrance or any ground lease. Nothing in this Paragraph shall be deemed to permit a Prohibited Transfer as defined in Paragraph 17 hereof.

Mortgagor shall keep the Property free from mechanics' and all other liens and encumbrances, except Permitted Encumbrances and statutory liens for real estate taxes and assessments not yet due and payable.

5. **Taxes and Assessments; Rents.** Mortgagor shall pay or cause to be paid when due all impositions and water, sewer and other charges, fines and impositions attributable to the Property and leasehold payments, if any, and all other sums due under any ground lease attributable to the Property. Mortgagor shall provide evidence satisfactory to Lender of compliance with these requirements promptly after the respective due dates for payment. Mortgagor shall pay, in full, but under protest in the manner provided by statute, any tax or assessment Mortgagor desires to contest.

6. **Insurance. Definitions.** For purposes of this Section 6:

"Property" or "Premises" means all land, improvements and fixtures.

"Real Estate" means only the land.

"Impositions" means all general and special real estate and property taxes and assessments (including condominium and planned unit development assessments, if any) and ground rents on the Premises, if any.

(a) Mortgagor, at its sole cost and expense, shall insure and keep insured the Premises against such perils and hazards, and in such amounts and with such limits, as Lender may from time to time require, and, in any event, including:

(i) **All Risk.** During the construction of the improvements on the Land, insurance against loss to the Property which during construction shall be on an "All Risk" perils "Builders' Risk, non-reporting "Completed Value" form and after completion of construction shall be on an "All Risk" policy form, in each case, covering insurance risks no less broad than those covered under a Standard Multi Peril (SMP) policy form, which contains a 1987 Commercial ISO "Causes

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of Loss - Special Form", including theft, and insurance against such other risks as Lender may reasonably require, including, but not limited to, insurance covering the cost of demolition of undamaged portions of any portion of the Property when required by code or ordinance, the increased cost of reconstruction to conform with current code or ordinance requirements and the cost of debris removal. In addition, during construction such policies shall cover real estate property taxes; architect, engineering, and consulting fees; legal and accounting fees, including, but not limited to, the cost of in-house attorneys and paralegals; advertising and promotions expenses; interest on money borrowed; additional commissions incurred upon renegotiating leases and any and all other expenses which may be incurred as a result of any property loss or destruction by an insured. Such policies shall be in amounts equal to the full replacement cost of the Property (other than the Real Estate), including all fixtures, equipment, construction materials and personal property on and off site, and Mortgagor's interest in any leasehold improvements. Such policies shall also contain a one hundred percent (100%) co-insurance clause with an agreed amount endorsement (with such amount to include the replacement cost of the foundation and any underground pipes), a permission to occupy endorsement and deductibles which are in amounts acceptable to Lender.

(ii) **Workers' Compensation.** During the construction of (or making of any alterations or improvements to) the Property (i) insurance covering claims based on the owner's or employer's contingent liability not covered by the insurance provided in subsection (iv) below and (ii) workers' compensation insurance covering all persons engaged in such alterations or improvements (the insurance may be obtained by Mortgagor's general contractor and subcontractors, provided the insurance satisfies all of the conditions and requirements of this Paragraph 6.

(iii) **Flood.** Insurance against loss or damage by flood or mud slide in compliance with the Flood Disaster Protection Act of 1973, as amended from time to time, if the Property is now, or at any time while the Liabilities remain outstanding shall be, situated in any area which an appropriate governmental authority designates as a special flood hazard area, Zone A or Zone V, in amounts equal to the full replacement value of all above grade structures on the Property (the existing appraisal for the Property indicates that the Property is not in a special flood hazard area).

(iv) **Public Liability.** Evidence of commercial general public liability insurance against death, bodily injury and property damage arising in connection with the Property. Such policy shall be written on a 1986 Standard ISO

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occurrence basis form or equivalent form, shall list Lender as the named insured, shall designate thereon the location of the Property and have such limits as Lender may reasonably require, but in no event provide less than One Million and No/100 Dollars (\$1,000,000.00) coverage. Mortgagor shall also obtain excess umbrella liability insurance with such limits as the Lender may reasonably require, but in no event shall the limits be less than One Million and No/100 Dollars (\$1,000,000.00).

(v) **Contractor's Insurance.** During the entire period of construction, Mortgagor shall cause to be furnished to Lender certificates from the insurance carrier for each general contractor evidencing workers' compensation, employers' liability, commercial auto liability, and commercial general liability insurance (including contractual liability and completed operations coverage) written on a 1986 standard "ISO" occurrence basis form or its equivalent, with general liability insurance limits as Lender may reasonably require, but in no event shall such limits be less than One Million and No/100 Dollars (\$1,000,000.00). Lender shall be named as an additional insured under such liability policies. Mortgagor shall cause each subcontractor to maintain commercial general liability, commercial automobile liability, workers' compensation, employers' liability, and excess umbrella liability coverage in form and amount satisfactory to Lender.

(vi) **Other Insurance.** Such other insurance relating to the Property and the use and operation thereof, as Lender may, from time to time, reasonably require, including, but not limited to, dramshop, products liability and non-owned aircraft.

(b) **Policy Requirements.** All insurance shall: (i) be carried in companies with a Best's rating of A/X or better, or otherwise acceptable to Lender; (ii) in form and content acceptable to Lender; (iii) provide thirty (30) days' advance written notice to Lender before any cancellation, adverse material modification or notice of non-renewal; (iv) to the extent limits are not otherwise specified herein, contain deductibles which are in amounts acceptable to Lender; and (v) provide that no claims shall be paid thereunder without ten (10) days advance written notice to Lender.

All physical damage policies and renewals shall contain a standard mortgage clause naming the Lender as mortgagee, which clause shall expressly state that any breach of any condition or warranty by Mortgagor shall not prejudice the rights of Lender under such insurance; and a loss payable clause in favor of the Lender for personal property, contents, inventory, equipment, loss of rents and business interruption. All liability policies and renewals shall name the Lender as an additional insured. No additional parties shall appear in the mortgage or loss payable clause without Lender's prior written consent. All deductibles shall be in amounts acceptable to Lender. In the event of the foreclosure of this

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Mortgage or any other transfer of title to the Premises in full or partial satisfaction of the Secured Indebtedness, all right, title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

(c) **Delivery of Policies.** Any notice pertaining to insurance and required pursuant to this Paragraph 6 shall be given in the manner provided in Paragraph 15 below at Lender's address stated below. The insurance shall be evidenced by the original policy or a true and certified copy of the original policy, or in the case of liability insurance, by certificates of insurance. Mortgagor shall use its best efforts to deliver originals of all policies and renewals (or certificates evidencing the same), marked "paid", (or evidence satisfactory to Lender of the continuing coverage) to Lender at least thirty (30) days before the expiration of existing policies and, in any event, Mortgagor shall deliver originals of such policies or certificates to Lender at least fifteen (15) days before the expiration of existing policies. If Lender has not received satisfactory evidence of such renewal or substitute insurance in the time frame herein specified, Lender shall have the right, but not the obligation, to purchase such insurance for Lender's interest only. Any amounts so disbursed by Lender pursuant to this Section shall be a part of the Secured Indebtedness and shall bear interest at the default interest rate provided in the Note. Nothing contained in this Paragraph 6 shall require Lender to incur any expense or take any action hereunder, and inaction by Lender shall never be considered a waiver of any right accruing to Lender on account of this Paragraph 6.

(d) **Separate Insurance.** Mortgagor shall not carry any separate insurance on the Premises concurrent in kind or form with any insurance required hereunder or contributing in the event of loss without Lender's prior written consent, and any such policy shall have attached standard non-contributing mortgagee clause, with loss payable to Lender, and shall otherwise meet all other requirements set forth herein.

(e) **Compliance Certificate.** At Lender's option, but not more often than annually, Mortgagor shall provide Lender with a report from Schwartz Brothers or such other independent insurance consultant of regional or national prominence, acceptable to Lender, certifying that Mortgagor's insurance is in compliance with this Paragraph 6.

(f) **Notice of Casualty.** Mortgagor shall give immediate notice of any loss to Lender. In case of loss covered by any of such policies, Lender is authorized to adjust, collect and compromise in its discretion, all claims thereunder and in such case, Mortgagor covenants to sign upon demand, or Lender may sign or endorse on Mortgagor's behalf, all necessary proofs of loss, receipts, releases and other papers required by the insurance companies to be signed by Mortgagor. Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact for the purposes set forth in the preceding sentence. Lender may deduct from such insurance proceeds any expenses incurred by Lender in the collection and settlement thereof, including, but not limited to, attorneys' and adjusters' fees and charges.

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(g) **Application of Proceeds.** If all or any part of the Premises shall be damaged or destroyed by fire or other casualty or shall be damaged or taken through the exercise of the power of eminent domain or other cause described in Paragraph 10, Mortgagor shall promptly and with all due diligence restore and repair the Premises whether or not the net insurance proceeds, award or other compensation (collectively, the "Proceeds") are sufficient to pay the cost of such restoration or repair. Lender may require that all plans and specifications for such restoration or repair be submitted to and approved by Lender in writing prior to commencement of the work. In the event that cost to repair the damage caused by the fire or other casualty is less than Fifty Thousand and 00/100 Dollars (\$50,000.00) (as certified by Mortgagor's architect), at Mortgagor's election, to be exercised by written notice to Lender (which notice must contain the architect's certification regarding the cost to repair) within fifteen (15) days following the date of loss (failure to so notify the Lender shall constitute an election to apply the proceeds to reduce the Secured Indebtedness), the entire amount of the Proceeds shall be either: (i) be applied to the Secured Indebtedness in such order and manner as Lender may elect, or (ii) be made available to Mortgagor on the terms and conditions set forth in this Paragraph 6 to finance the cost of restoration or repair with any excess to be applied to the Secured Indebtedness in the inverse order of maturity. Any application of the Proceeds to reduce the Secured Indebtedness shall constitute a voluntary prepayment or fees provided in the Note or other Loan Documents. With respect to damage to all or any part of the Premises through the exercise of the power of eminent domain or other cause described in Paragraph 10 of the Mortgage, or if the cost to repair the damage caused by the fire or other casualty is Fifty Thousand and 00/100 Dollars (\$50,000.00) or more, at Lender's election, to be exercised by written notice to Mortgagor within thirty (30) days following Lender's unrestricted receipt in cash or the equivalent thereof of the Proceeds, the entire amount of the Proceeds, shall either: (i) be applied to the Secured Indebtedness in such order and manner as Lender may elect or (ii) be made available to Mortgagor on the terms and conditions set forth in this Paragraph 6 to finance the cost of restoration or repair with any excess to be applied to the Secured Indebtedness in the inverse order of maturity. Any application of the Proceeds to reduce the Secured Indebtedness shall constitute a voluntary prepayment subject to any prepayment premiums or fees provided in the Note or other Loan Documents. Lender may apply the Proceeds to such prepayment premiums or fees. With respect to any damage to all or any part of the Premises caused by fire or other casualty, at Mortgagor's election, to be exercised by written notice to Lender within fifteen (15) days following the date of the loss (failure to so notify Lender shall constitute an election to apply the proceeds to reduce the Secured Indebtedness), the entire amount of the Proceeds, shall either: (i) be applied to the Secured Indebtedness in such order and manner as Lender may elect, or (ii) be made available to Mortgagor on the terms and conditions set forth in this Paragraph 6 to finance the cost of restoration or repair with any excess to be applied to the Secured Indebtedness in the inverse order of maturity. Any application of the Proceeds to reduce the Secured Indebtedness shall constitute a voluntary prepayment subject to any prepayment premiums or fees provided in the Note or other Loan Documents. Lender may apply the

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Proceeds to such prepayment or fees. If the amount of the Proceeds to be made available to Mortgagor pursuant to this Paragraph 6 is less than the cost of the restoration or repair as estimated by Lender at any time prior to completion thereof, Mortgagor shall cause to be deposited with Lender the amount of such deficiency within thirty (30) days of Lender's written request therefor (but in no event later than the commencement of the work) and Mortgagor's deposited funds shall be disbursed prior to the Proceeds. If Mortgagor is required to deposit funds under this Paragraph 6, the deposit of such funds shall be a condition precedent to Lender's obligation to disburse the Proceeds held by Lender hereunder. The amount of the Proceeds which is to be made available to Mortgagor, together with any deposits made by Mortgagor hereunder, shall be held by Lender to be disbursed from time to time to pay the cost of repair or restoration either, at Lender's option, to Mortgagor or directly to contractors, subcontractors, material suppliers and other persons entitled to payment in accordance with and subject to such conditions to disbursement as Lender may impose to assure that the work is fully completed in a good and workmanlike manner and paid for and that no liens or claims arise by reason thereof. Lender may require (i) evidence of the estimated cost of completion of such restoration or repair satisfactory to Lender and (ii) such architect's certificates, waivers of lien, contractors' sworn statements, title insurance endorsements, plats of survey and other evidence of cost, payment and performance acceptable to Lender. If Lender requires mechanics' and materialmen's lien waivers in advance of making disbursements, such waivers shall be deposited with an escrow trustee acceptable to Lender pursuant to a construction loan escrow agreement satisfactory to Lender. No payment made prior to final completion of the repair or restoration shall exceed ninety percent (90%) of the value of the work performed from time to time. Lender may commingle any such funds held by it with its other general funds. Lender shall not be obligated to pay interest in respect of any such funds held by it nor shall Mortgagor be entitled to a credit against any of the Secured Indebtedness except and to the extent the funds are applied thereto pursuant to this Paragraph 6. Without limitation of the foregoing, Lender shall have the right at all times to apply such funds to the cure of any Event of Default or the performance of any obligations of Mortgagor under the Loan Documents.

7. Use, Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments. Mortgagor shall keep the Property in good condition and repair and shall not commit waste or permit impairment or deterioration of the Property. Mortgagor shall not allow store, treat or dispose of Hazardous Material as defined in Paragraph 28, nor permit the same to exist or be stored, treated or disposed of, from or upon the Property. Mortgagor shall promptly restore or rebuild any buildings or improvements now or hereafter on the Property which may become damaged or destroyed. Mortgagor shall comply with all requirements of law or municipal ordinances with respect to the use, operation, and maintenance of the Property, including all environmental, health and safety laws and regulations, and shall make no material alterations in the Property, except as required by law, without the prior written consent of Lender. Mortgagor shall not grant or permit any easements, licenses, covenants or declarations of use against the Property. If this Mortgage is on a unit in a condominium or a planned unit development, Mortgagor shall perform all of Mortgagor's obligations under the declaration of covenants creating or governing the condominium or

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planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. If this Mortgage is on a ground leasehold, Mortgagor shall perform or cause to be performed all obligations of the lessee under the underlying ground lease.

8. **Protection of Lender's Security.** If Mortgagor fails to perform any of the covenants and agreements contained in this Mortgage, the Note or the other Loan Documents, or if any action or proceeding is threatened or commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Mortgagor, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as it deems expedient or necessary to protect Lender's interest, including: (i) making repairs; (ii) discharging Prior Encumbrances in full or part; (iii) paying, settling, or discharging tax liens, mechanics' or other liens, paying ground rents (if any); (iv) procuring insurance; and (v) renting, operating and managing the Property and paying operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Property shall be operational and usable for its intended purposes. Lender, in making such payments of Impositions and assessments, may do so in accordance with any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of same or into the validity thereof.

Any amounts disbursed by Lender pursuant to this Paragraph 8 shall be part of the Secured Indebtedness and shall bear interest at the default interest rate provided in the Note (the "Default Rate"). Nothing contained in this Paragraph 8 shall require Lender to incur any expense or take any action hereunder, and inaction by Lender shall never be considered a waiver of any right accruing to Lender on account of this Paragraph 8.

9. **Inspection of Property and Books and Records.** Mortgagor shall permit Lender and its representatives and agents to inspect the Property from time to time during normal business hours and as frequently as Lender requests. Mortgagor shall keep and maintain full and correct books and records showing in detail the income and expenses of the Property. From time to time upon not less than five (5) days' demand, Mortgagor shall permit Lender or its agents to examine and copy such books and records and all supporting vouchers and data at its offices or at the address identified above.

10. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid directly to Lender. Mortgagor hereby grants a security interest to Lender in and to such proceeds. Lender is authorized to collect such proceeds and, at Lender's sole option and discretion, to apply said proceeds either to restoration or repair of the Property or in payment of the Secured Indebtedness. In the event the Property is restored, Lender may pay the condemnation proceeds in accordance with its customary construction loan payment procedures, and may charge its customary fee for such services. In the event the condemnation proceeds are applied to reduce the Secured Indebtedness, any such application shall constitute a prepayment, and any prepayment premium required by the Loan Documents shall then be due and payable as provided therein. Lender may apply the condemnation proceeds to such prepayment premium.

11. **Mortgagor Not Released; Forbearance by Lender Not a Waiver; Remedies Cumulative.** Extension or other modification granted by Lender to any

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successor in interest of Mortgagor of the time for payment of all or any part of the Secured Indebtedness shall not operate to release, in any manner, the liability of the Mortgagor. Any forbearance or inaction by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. Any acts performed by Lender to protect the security of this Mortgage, as authorized by Paragraph 8 or otherwise, shall not be a waiver of Lender's right to accelerate the maturity of the Indebtedness. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively. No consent or waiver by Lender to or of any breach or default by Mortgagor shall be deemed a consent or waiver to or of any other breach or default.

12. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements contained herein shall bind, and the rights hereunder shall inure to, the respective heirs, executors, legal representatives, successors and assigns of Lender and Mortgagor. If this Mortgage is executed by more than one Mortgagor, each Mortgagor shall be jointly and severally liable hereunder.

13. **Loan Charges.** If the Loan secured by this Mortgage is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Maker which exceeded permitted limits ("Excess Loan Charges") will, at Lender's option, either be refunded to Maker or applied as a credit against the then outstanding principal balance or accrued and unpaid interest thereon. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note. Neither Mortgagor nor any other guarantor or obligor of the Note shall have any action against Lender for any damages whatsoever arising from the payment of Excess Loan Charges.

14. **Legislation Affecting Lenders' Rights.** If an enactment, modification or expiration of an applicable governmental law, ruling or regulation has the effect of rendering any provision of this Note, this Mortgage or any of the other Loan Documents unenforceable according to its terms, Lender, at its option upon giving written notice to Maker allowing Maker ninety (90) days to pay off the balance of this loan may require immediate payment in full of all sums secured by this Mortgage and may invoke any remedies permitted by Paragraph 19.

15. **Notice.** Except for any notice required under applicable law to be given in another manner, any notices required or given under this Mortgage shall be given by hand delivery, by nationally recognized overnight courier service or by certified mail, return receipt requested. Notices shall be given to Mortgagor at the address provided below and to Lender at Lender's address stated above. Notices shall be deemed to have been given and effective on the date of delivery if hand-delivered, the next business day after delivery to the nationally recognized overnight courier service if by such courier service, or two business days after the date of mailing shown on the certified receipt, if mailed. Any party hereto may change the address to which notices are given by notice as provided herein. Notices to Mortgagor shall be sent to:

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SHEFFIELD PARTNERS, L.L.C.
c/o Wexner Greenberg Associates, Inc.
1808 North Halsted Street, Chicago, Illinois 60610

ATTN: Mr. Richard P. Wexner

with a copy to:

Brown, Udell & Pomerantz, Ltd.
2950 North Lincoln Avenue
Chicago, Illinois 60656
ATTN: Michael I. Brown

16. **Governing Law; Severability.** The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. In the event that any provision or clause of this Mortgage, the Note or any of the other Loan Documents conflicts with applicable law, or is adjudicated to be invalid or unenforceable same shall not affect other provisions of this Mortgage, the Note or any of the other Loan Documents which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage, the Note or any of the other Loan Documents are declared to be severable and the validity or enforceability of the remainder of the Loan Document in question shall be construed without reference to the conflicting, invalid or unenforceable clause or provision.

17. **Prohibitions on Transfer of the Property or of an Interest in Mortgagor.** It shall be an immediate default if, without the prior written consent of Lender, which consent may be granted or withheld at Lender's sole discretion, Mortgagor shall create, effect or consent to or shall suffer or permit any conveyance, sale (including an installment sale), assignment, transfer, lien, pledge, hypothecate, mortgage, security interest, or other encumbrance or alienation, whether by operation of law, voluntarily or otherwise, (collectively "Transfer") of (1) the Property or any part thereof or interest therein; (2) all or a portion of the beneficial interest of Mortgagor or change in the power of direction, if Mortgagor is a trustee; (3) all or a portion of the stock of any corporate Mortgagor or corporate beneficiary of a trustee Mortgagor, that results or could result in a material change in the identity of the person(s) or entities previously in control of such corporation; or (4) all or a portion of a partnership interest in partnership, a membership interest in a limited liability or joint venture interest of a joint venturer in the joint venture, if Mortgagor or Mortgagor's beneficiary consists of or includes a partnership, limited liability company or joint venture, that results or could result in a material change in the identity of the person(s) in control of such partnership, limited liability company or joint venture (each of the foregoing is referred to as a "Prohibited Transfer"). In the event of such default, Lender may declare the entire unpaid balance, including interest, immediately due and payable. The foregoing provisions of this Paragraph 17 shall not, however, apply to the lien of current Impositions and assessments not yet due and payable. This option shall not be exercised by Lender if prohibited by Federal law as of the date of this Mortgage.

18. **Event of Default.** Each of the following shall constitute an event of default ("Event of Default") under this Mortgage:

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(a) Mortgagor's failure to pay any amount due herein or secured hereby, or any installment of principal or interest when due and payable whether at maturity or by acceleration or otherwise under the Note, this Mortgage, or any other Loan Document which failure continues for more than five (5) days from the due date; provided, however, that such five (5) day cure period shall not apply to the other subparagraphs of this Paragraph 18;

(b) Mortgagor's failure to perform or observe any other covenant, agreement, representation, warranty or other provision contained in the Note, this Mortgage (other than an Event of Default described elsewhere in this Paragraph 18) or any other document or instrument evidencing, guarantying or securing the Secured Indebtedness, and such failure continues for more than twenty-one (21) days after notice thereof given by Lender to Mortgagor; provided, however, that such cure period shall not apply to the other subparagraphs of this Paragraph 18;

(c) The occurrence of any breach of any representation or warranty contained in this Mortgage or any other Loan Document;

(d) A Prohibited Transfer occurs;

(e) A court having jurisdiction shall enter a decree or order for relief in respect of Mortgagor or against either Richard Greenberg or Richard P. Wexner, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law; or if Mortgagor, or Richard Greenberg or Richard P. Wexner, or any person in control of Mortgagor, shall: (i) file a voluntary petition in bankruptcy, insolvency, debtor relief or for arrangement, reorganization or other relief under the Federal Bankruptcy Act or any similar state or federal law; (ii) consent to or suffer the appointment of or taking possession by a receiver, liquidator, or trustee (or similar official) of the Mortgagor or for any part of the Property or any substantial part of the Mortgagor's other property or any substantial part of the property of the Beneficiary or any substantial part of the property of Richard Greenberg or Richard P. Wexner; (iii) make any assignment for the benefit of Mortgagor's or Richard Greenberg's or Richard P. Wexner's creditors; (iv) fail generally to pay Mortgagor's debts as they become due;

(f) All or a substantial part of Mortgagor's or any of Richard Greenberg's or Richard P. Wexner's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon;

(g) If Mortgagor is other than a natural person or persons: (i) the dissolution or termination of existence of Mortgagor, voluntarily or involuntarily, whether by reason of death of a general partner of Mortgagor or otherwise; (ii) the amendment or modification in any respect of Mortgagor's articles or agreement of partnership or its corporate resolutions or its articles of incorporation or bylaws that would affect Mortgagor's performance of its obligations under the Note, this Mortgage or the other Loan Documents;

(h) This Mortgage shall not constitute a valid lien on and security

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interest in the Property (subject only to the Permitted Encumbrances), or if such lien and security interest shall not be perfected;

(i) The Property is abandoned;

(j) An indictment or other charge is filed against Mortgagor, or Beneficiary or Richard Greenberg, or Richard P. Wexner in any jurisdiction, under any federal or state law, for which forfeiture of the Premises or of other collateral securing the Secured Indebtedness or of any other funds, property or other assets of Mortgagor Richard Greenberg, or Richard P. Wexner or Lender is a potential penalty [unless such charge is dismissed within ten (10) days after filing]; or

(k) The death or incompetency of Richard Greenberg or Richard P. Wexner.

19. **Acceleration; Remedies.** AT ANY TIME AFTER AN EVENT OF DEFAULT, LENDER, AT LENDER'S OPTION, MAY DECLARE ALL SUMS SECURED BY THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS TO BE IMMEDIATELY DUE AND PAYABLE WITHOUT FURTHER DEMAND AND MAY FORECLOSE THIS MORTGAGE BY JUDICIAL PROCEEDING. LENDER SHALL BE ENTITLED TO COLLECT IN SUCH PROCEEDING ALL EXPENSES OF FORECLOSURE, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COSTS INCLUDING ABSTRACTS AND TITLE REPORTS, ALL OF WHICH SHALL BECOME A PART OF THE SECURED INDEBTEDNESS AND IMMEDIATELY DUE AND PAYABLE, WITH INTEREST AT THE DEFAULT RATE. THE PROCEEDS OF ANY FORECLOSURE SALE OF THE PROPERTY SHALL BE APPLIED AS FOLLOWS: FIRST, TO ALL COSTS, EXPENSES AND FEES INCIDENT TO THE FORECLOSURE PROCEEDINGS; SECOND, AS SET FORTH IN PARAGRAPH 3 OF THIS MORTGAGE; AND THIRD, ANY BALANCE TO MORTGAGOR.

20. **Assignment of Leases and Rents.** All right, title, and interest of Mortgagor in and to those leases, if any, listed on Exhibit "C" and all present and future leases affecting the Property, written or oral (collectively, "Leases"), and all rents, income, receipts, revenues, issues, avails and profits from or arising out of the Property (collectively "Rents") are hereby transferred and assigned to Lender as further security for the payment of the Secured Indebtedness, and Mortgagor hereby grants a security interest to Lender in and to the same. Mortgagor shall deliver to Lender copies of all future leases affecting the Property. All executed Leases shall be specifically assigned to Lender by an instrument satisfactory to Lender. Each Lease shall, at the option of Lender, be paramount or subordinate to this Mortgage. Mortgagor shall furnish Lender with executed copies of each Lease and, if requested by Lender, with estoppel letters from each tenant, which estoppel letters shall be in a form satisfactory to Lender and shall be delivered not later than thirty (30) days after Lender's written demand.

If, without Lender's prior written consent, Mortgagor; (i) as lessor, fails to perform and fulfill any term, covenant, or provision in any Lease; (ii) suffers or permits to occur any breach or default under the provisions of any separate assignment of any Lease given as additional security for the Secured Indebtedness; (iii) fails to fully protect, insure, preserve, and cause continued performance or fulfillment of the terms, covenants, or provisions, which are required to be performed by the lessee or the lessor of any other Lease or Leases hereafter assigned to Lender; (iv) cancels, terminates, or materially

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amends or modifies any Lease; or (v) permits or approves an assignment by lessee of a Lease or a subletting of all or any part of the Premises demised in the Lease; such occurrence shall constitute an Event of Default hereunder.

Lender shall have the right to assign Mortgagor's right, title and interest in any Leases to any subsequent holder of this Mortgage or the Note and other Loan Documents or to any person acquiring title to all or any part of the Premises through foreclosure or otherwise.

Upon an Event of Default, this Mortgage shall constitute a direction to each lessee under the Leases and each guarantor thereof, if any, to pay all Rents directly to Lender without proof of the Event of Default. Lender shall have the authority, as Mortgagor's attorney-in-fact (such authority being coupled with an interest and irrevocable) to sign the name of Mortgagor and to bind Mortgagor and to bind Mortgagor on all papers and documents relating to the operation, leasing and maintenance of the Property. While this assignment is a present assignment, Lender shall not exercise any of the rights or powers conferred upon it by this Paragraph until an Event of Default shall occur under this Mortgage.

If Mortgagor, as lessor, shall neglect or refuse to perform and keep all of the covenants and agreements contained in the Lease or Leases, then Lender may perform and comply with any such Lease covenants and agreements. All related costs and expenses incurred by the Lender shall become a part of the Secured Indebtedness and shall be due and payable upon demand by Lender with interest thereon accruing thereafter at the Default Rate.

Lender, however, shall not be obligated to perform or discharge any obligation, duty or liability under any Lease. Mortgagor shall, defend, protect, indemnify and hold Lender harmless from and against any and all liability, loss or damage to Lender under the Leases or under or by reason of their assignments and of and from any and all claims and demands whatsoever which may be asserted against Lender by reason of all alleged obligations or undertakings on its part to perform or discharge any Lease terms, covenants or agreements. The amount of any such liability, loss or damage arising under the Leases or under or by reason of their assignment, or in the defense of any claims or demands, including costs, expenses and reasonable attorneys' fees, incurred by Lender shall be a part of the Secured Indebtedness due and payable upon demand with interest thereon accruing thereafter at the Default Rate.

21. **Appointment of Receiver.** Upon acceleration under Paragraphs 17, 19 or abandonment of the Property, and without further notice to Mortgagor, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the Rents including those past due. The receiver shall have the power to collect the Rents from the time of acceleration through the pendency of any foreclosure proceeding and during the full statutory period of redemption, if any. All Rents collected by the receiver shall be applied as the appointing court may direct and, in the absence of such direction, first to payment of the costs and expenses of the management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then as provided in Paragraph 3. The receiver shall be liable to account only for those Rents actually received.

22. **Release.** Upon payment of all Secured Indebtedness, Lender shall

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release this Mortgage upon payment by Mortgagor of all costs and fees to release same, if any. Mortgagor shall be responsible for recording the release, including all related costs of recordation.

23. **Security Agreement.** Without limiting any other provisions of this Mortgage, this Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State of Illinois (herein called the "Code") with respect to all fixtures, apparatus, equipment or articles, and all replacements and substitutions, now or hereafter located on the Property as set forth in the description of the Property above, including but not limited to the air-conditioning, heating, gas, water, power, light, refrigeration, and ventilation systems which are presently located at the Property, and with respect to all Funds and other sums which may be deposited with Lender pursuant hereto (all for the purposes of this Paragraph called "Collateral"), and Mortgagor hereby grants to Lender a security interest in such Collateral. All of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Property. When the Secured Indebtedness shall become due, whether by acceleration or otherwise, Lender shall have all remedies of a secured party under the Code. This Mortgage is intended to be a financing statement with respect to any other Collateral which constitutes "fixtures" within the meaning of the Code. Mortgagor shall execute and deliver to Lender any financing statements necessary to perfect the security interest in the Collateral created hereby. Any Code requirement for reasonable notice shall be met if such notice is delivered as provided herein at least five (5) days prior to the time of any sale, disposition, or other event or matter giving rise to the notice (which period of time and method of notice is agreed to be commercially reasonable).

24. **Zoning.** The Premises are zoned to permit the current operation and use of the Premises. Mortgagor will not initiate or acquiesce in a zoning reclassification without Lender's prior written consent.

25. **Principal Amount of Mortgage.** At no time shall the principal amount of the indebtedness secured by this Mortgage not including sums advanced for Impositions and Insurance premiums or to protect the security of this Mortgage, exceed the stated principal amount of the Note plus One Million Six Hundred Thousand and 00/100 Dollars (\$1,600,000.00).

26. **Business Loan.** Mortgagor hereby represents and warrants that: (a) the proceeds of the Secured Indebtedness (the "Loan") will be used for the purposes specified in 815 ILCS 205/4(1)(a) or (c) (1992 State Bar Edition) of the Illinois Compiled Statutes, as amended; (b) the Loan constitutes a "business loan" within the purview of that Section; (c) the Loan is a transaction exempt from the Truth in Lending Act, 15 U.S.C. '1601, et seq.; and (d) the proceeds of the Indebtedness will not be used for the purchase of registered equity securities within the purview of Regulation "U" issued by the Board of Governors of the Federal Reserve System.

27. **Riders.** All riders attached hereto, if any, are incorporated herein and made a part hereof.

28. **Environmental Compliance.** Mortgagor hereby represents and warrants to Lender and covenants with Lender that:

(a) **Definitions.** For purposes of this Paragraph 28:

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(i) "Premises" or "Property" means: The Real Estate including improvements presently and hereafter situated thereon or thereunder, construction material used in such improvements, surface and subsurface soil and water, areas leased to tenants, and all business, uses and operations thereon.

(ii) "Environmental Laws" means:

(1) any present or future federal statute, law, code, rule, regulation, ordinance, order, standard, permit, license, guidance document or requirement (including consent decrees, judicial decisions and administrative orders) together with all related amendments, implementing regulations and reauthorizations, pertaining to the protection, preservation, conservation or regulation of the environment, including but not limited to: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq. ("TOSCA"); the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the Clean Water Act, 33 U.S.C. Section 1251 et seq.

(2) any present or future state or local statute, law, code, rule, regulation, ordinance, order, standard, permit, license or requirement (including consent decrees, judicial decisions and administrative orders) together with all related amendments, implementing regulations and reauthorizations, pertaining to the protection, preservation, conservation or regulation of the environment.

(iii) "Hazardous Material" means:

(1) "hazardous substances" as defined by CERCLA;

(2) "hazardous wastes", as defined by RCRA;

(3) "hazardous substances", as defined by the Clean Water Act;

(4) any item which is banned or

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otherwise regulated pursuant to TOSCA;

(5) any item which is regulated by the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 et seq.;

(6) any item which triggers any thresholds regulated by or invoking any provision of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. 11001 et seq.;

(7) any hazardous, dangerous or toxic chemical, material, waste, pollutant, contaminant or substance ("pollutant") within the meaning of any Environmental Law prohibiting, limiting or otherwise regulating the use, exposure, release, emission, discharge, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of such pollutant;

(8) any petroleum, crude oil or fraction thereof;

(9) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. Section 2011 et seq., and amendments thereto and reauthorizations thereof;

(10) asbestos-containing materials in any form or condition; and

(11) polychlorinated biphenyls ("PCBs") in any form or condition.

(iv) "Environmental Actions" means:

(1) any notice of violation, complaint, claim, citation, demand, inquiry, report, action, assertion of potential responsibility, lien, encumbrance, or proceeding regarding the Premises, whether formal or informal, absolute or contingent, matured or unmatured, brought or issued by any governmental unit, agency, or body, or any person or entity respecting:

a. Environmental Laws;

b. the environmental

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condition of the Premises, or any portion thereof, or any property near the Premises, including actual or alleged damage or injury to humans, public health, wildlife, biota, air, surface or subsurface soil or water, or other natural resources; or

c. the use, exposure, release, emission, discharge, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of Hazardous Material either on the Premises or off-site.

(2) any violation or claim of violation by Maker of any Environmental Laws whether or not involving the Premises;

(3) any lien for damages caused by, or the recovery of any costs incurred by any person or governmental entity for the investigation, remediation or cleanup of any release or threatened release of Hazardous Material; or

(4) the destruction or loss of use of property, or the injury, illness or death of any officer, director, employee, agent, representative, tenant or invitee of Maker or any other person alleged to be or possibly to be, arising from or caused by the environmental condition of the Premises or the release, emission or discharge of Hazardous Materials from the Premises.

b. **Representations and Warranties.** Mortgagor hereby represents and warrants to Lender that:

(i) **Compliance.** To the best of Mortgagor's knowledge based on all appropriate and thorough inquiry and except as described in Exhibit "D" hereto, the Premises and Mortgagor have been and are currently in compliance with all Environmental Laws. There have been, to the best of Mortgagor's knowledge based on all appropriate and thorough inquiry, no past, and there are no pending or threatened, Environmental Actions to which Mortgagor is a party or which relate to the Premises. All required governmental permits and licenses are in effect, and

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Mortgagor is in compliance therewith. Mortgagor has not received any notice of any Environmental Action respecting Mortgagor, the Premises or any off-site facility to which has been sent any Hazardous Material for off-site treatment, recycling, reclamation, reuse, handling, storage, sale or disposal.

(ii) **Absence of Hazardous Material.** No use, exposure, release, emission, discharge, generation, manufacture, sale, handling, reuse, presence, storage, treatment, transport, recycling or disposal of Hazardous Material has, to the best of Mortgagor's knowledge based on all appropriate and thorough inquiry, occurred or is occurring on or from the Premises except in compliance with Environmental Laws and as described in Exhibit "E" hereto, ("Disclosed Material"). The term "released" shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers and other receptacles containing any Hazardous Material). To the best of Mortgagor's knowledge based on all appropriate and thorough inquiry, all Hazardous Material used, treated, stored, transported to or from, generated or handled on the Premises has been disposed of on or off the Premises in a lawful manner. To the best of Mortgagor's knowledge based on all appropriate and thorough inquiry, no environmental, public health or safety hazards currently exist with respect to the Premises. To the best of Mortgagor's knowledge based on all appropriate and thorough inquiry, no underground storage tanks (including but not limited to petroleum or heating oil storage tanks) are present on or under the Premises, or have been on or under the Property except as has been disclosed in writing to Lender ("Disclosed Tanks").

c. **Mortgagor's Covenants.** Mortgagor hereby covenants and agrees with Lender as follows:

(i) **Compliance.** The Premises and Mortgagor shall comply with all Environmental Laws. All required governmental permits and licenses shall be obtained and maintained, and Mortgagor shall comply therewith. All Hazardous Material on the Premises will be disposed of in a lawful manner without giving rise to liability under any Environmental Laws. Mortgagor will satisfy all requirements of applicable Environmental Laws for the registration, operation, maintenance, closure and removal of all underground storage tanks on the Premises, if any. Without limiting the foregoing, all Hazardous Material shall be handled in compliance with all applicable Environmental Laws.

(ii) **Absence of Hazardous Material.** Other than

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Disclosed Material, no Hazardous Material shall be introduced to or used, exposed, released, emitted, discharged, generated, manufactured, sold, transported, handled, stored, treated, reused, presented, disposed of or recycled on the Premises without thirty (30) days' prior written notice to Lender.

(iii) **Environmental Actions and Right to Consent.** Mortgagor shall immediately notify Lender of all Environmental Actions and provide copies of all written notices, complaints, correspondence and other documents relating thereto within two business days of receipt, and Mortgagor shall keep Lender informed of all responses thereto. Mortgagor shall promptly cure and have dismissed with prejudice all Environmental Actions in a manner satisfactory to Lender and Mortgagor shall keep the Premises free of any encumbrance arising from any judgment, liability or lien imposed pursuant to any Environmental Actions. Notwithstanding the foregoing sentence, Mortgagor may, diligently, in good faith and by appropriate legal proceedings, contest such proceedings provided: (i) Mortgagor first furnishes to Lender such deposits or other collateral as Lender, in its sole discretion, deems sufficient to fully protect Lender's interests; (ii) such contest shall have the effect of preventing any threatened or pending sale or forfeiture of all or any portion of the Premises or the loss or impairment of Lender's lien and security interests in and to the Premises; and (iii) such contest will not cause Lender to incur any liability, in Lender's sole judgment. Mortgagor shall permit Lender, at Lender's option, to appear in and to be represented in any such contest and shall pay upon demand all expenses incurred by Lender in so doing, including attorneys' fees.

(iv) **Future Environmental Audits.** Mortgagor shall provide such information and certifications which Lender may reasonably request from time to time to monitor Mortgagor's compliance with this Article for the sole purpose of protecting Lender's security interest. To protect its security interest, Lender shall have the right, but not the obligation, at any time to enter upon the Premises, take samples, review Mortgagor's books and records, interview Mortgagor's employees and officers, and conduct such other activities as Lender, at its sole discretion, deems appropriate. Mortgagor shall cooperate fully in the conduct of such an audit. If Lender decides to conduct such an audit because of: (a) an Environmental Action; (b) Lender's considering taking possession of or title to the Premises after default by Mortgagor; (c) a material change in the use of the Premises, which in Lender's opinion, increases the risk to its security interest; or (d) the introduction of Hazardous Material other than Disclosed Material to the Premises; then Mortgagor shall

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pay upon demand all costs and expenses connected with such audit, which, until paid, shall become additional indebtedness secured by the Loan Documents and shall bear interest at the Default Rate. Nothing in this Article shall give or be construed as giving Lender the right to direct or control Mortgagor's actions in complying with Environmental Laws.

(v) **Event of Default and Opportunity to Cure.** If Mortgagor fails to comply with any of its covenants contained in this Section C within thirty (30) days after notice by Lender to Mortgagor, Lender may, at its option, declare an Event of Default. If, however, the noncompliance cannot, in Lender's reasonable determination, be corrected within such thirty (30) day period, and if Mortgagor has promptly commenced and diligently pursues action to cure such noncompliance to Lender's satisfaction, then Mortgagor shall have such additional time as is reasonably necessary to correct such noncompliance, provided Mortgagor continues to diligently pursue corrective action, but in no event more than a total of one hundred eighty (180) days after the initial notice of noncompliance by Lender.

(vi) There are no pending or threatened: (i) actions or proceedings from any governmental agency or any other entity regarding the condition or use of the Property, or regarding any environmental, health or safety law; or (ii) "superliens" or similar governmental actions or proceedings that could impair the value of the Property, or the priority of the lien of this Mortgage or any of the other Loan Documents (collectively "Environmental Proceedings"). Mortgagor will promptly notify Lender of any notices, or other knowledge obtained by Mortgagor hereafter of any pending or threatened Environmental Proceedings, and Mortgagor will promptly cure and have dismissed with prejudice any such Environmental Proceedings to the satisfaction of Lender.

(vii) Any fees, costs and expenses imposed upon or incurred by Lender on account of any breach of this Paragraph 28 shall be immediately due and payable by Mortgagor to Lender upon demand, and shall (together with interest thereon at the Default Rate accruing from the date such fees, costs and expenses are so imposed upon or incurred by Lender) become part of the Secured Indebtedness. Mortgagor shall keep, save and protect, defend, indemnify and hold Lender harmless from and against any and all claims, loss, cost, damage, liability or expense, including reasonable attorneys' fees, sustained or incurred by Lender by reason of any Environmental Proceedings or the breach or default by Mortgagor of any representation, warranty or covenant contained in this Paragraph 28.

(d) **Lender's Right to Rely.** Lender is entitled to rely upon

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Mortgagor's representations, warranties and covenants contained in this Article despite any independent investigations by Lender or its consultants. The Mortgagor shall take all necessary actions to determine for itself, and to remain aware of, the environmental condition of the Premises. Mortgagor shall have no right to rely upon any independent environmental investigations or findings made by Lender or its consultants unless otherwise stated in writing therein and agreed to in writing by Lender.

(a) **Indemnification.** The term "Lender's Environmental Liability" shall mean any and all losses, liabilities, obligations, penalties, claims, fines, lost profits, demands, litigation, defenses, costs, judgments, suits, proceedings, damages (including consequential, punitive and exemplary damages), disbursements or expenses of any kind or nature whatsoever (including attorneys' fees at trial and appellate levels and experts' fees and disbursements and expenses incurred in investigating, defending against, settling or prosecuting any suit, litigation, claim or proceeding) which may at any time be either directly or indirectly imposed upon, incurred by or asserted or awarded against Lender or any of Lender's parent and subsidiary corporations and their affiliates, shareholders, directors, officers, employees, and agents (collectively Lender's "Affiliates") in connection with or arising from:

(i) any Hazardous Material used, exposed, emitted, released, discharged, generated, manufactured, sold, transported, handled, stored, treated, reused, presented, disposed of or recycled on, in or under all or any portion of the Premises, or any surrounding areas;

(ii) any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referred to in this Article;

(iii) any violation, liability or claim of violation or liability, under any Environmental Laws;

(iv) the imposition of any lien for damages caused by, or the recovery of any costs incurred for the cleanup of, any release or threatened release of Hazardous Material; or

(v) any Environmental Actions.

Mortgagor shall indemnify, defend (at trial and appellate levels and with counsel, experts and consultants acceptable to Lender and at Mortgagor's sole cost) and hold Lender and its Affiliates free and harmless from and against Lender's Environmental Liability (collectively, "Mortgagor's Indemnification Obligations"). Mortgagor's Indemnification Obligations shall survive in perpetuity with respect to any Lender's Environmental Liability.

Mortgagor and its successors and assigns hereby waive, release and agree not to make any claim or bring any cost recovery action against Lender under or with respect to any Environmental Laws. Mortgagor's obligation to Lender under this indemnity shall likewise be

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without regard to fault on the part of Mortgagor or Lender with respect to the violation or condition which results in liability to Lender.

29. **Compliance with Illinois Mortgage Foreclosure Law.** If any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et. seq. (1992 State Bar Edition) of the Illinois Compiled Statutes) (the "Act") the provisions of the Act shall take precedence over the Mortgage provisions, but shall not invalidate or render unenforceable any other Mortgage provision that can be construed in a manner consistent with the Act. If any Mortgage provision shall grant to Lender any rights or remedies upon Mortgagor's default which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of such provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Paragraph 19 of this Mortgage, shall be added to the Indebtedness secured by this Mortgage or by the judgment of foreclosure.

30. **Interpretation.** This Mortgage shall be construed pursuant to the laws of the State of Illinois. The headings of sections and paragraphs in this Note are for convenience only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions. The use of singular and plural nouns, and masculine, feminine, and neuter pronouns, shall be fully interchangeable, where the context so requires. If any provision of this Mortgage, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstances, is adjudicated to be invalid, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included. Time is of the essence of the payment and performance of this Mortgage.

31. **Accountant's Letters.** At Lender's request, the Mortgagor shall have delivered to Lender one or more letters addressed to Lender and signed by each accountant or firm of accountants who prepared any of the financial statements furnished, or who will prepare any financial statement to be furnished, to Lender hereunder or under any of the Loan Documents, affirming that such accountant or firm of accountants understands that the Lender will rely on such financial statements and that the liability and responsibility of such accountant or firm of accountants to the Lender with respect thereto will not be eliminated, diminished or affected in any way by Illinois Public Act 84-1251 (Laws 1986) or any other statutory, regulatory, administrative or other law, regulation, rule, enactment, or ordinance.

32. **Waiver of Right of Redemption.** To the full extent permitted by law, Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption from sale

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under any order or decree of foreclosure of this Mortgage, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date hereof, it being the intent hereof that any and all such right of redemption of Mortgagor, and of all other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by involving or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note.

33. Waiver of Jury Trial. MORTGAGOR AND LENDER WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (i) UNDER THIS MORTGAGE, THE OTHER LOAN DOCUMENTS OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH; OR (ii) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS. MORTGAGOR AND LENDER AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

34. THIS SECTION INTENTIONALLY DELETED.

35. IRPTA. Mortgagor represents that the Property is not subject to the Illinois Responsible Property Transfer Act of 1988, as amended (Ill. Rev. Stat. Ch.30, par. 901) ("IRPTA").

36. Construction Mortgage. The Note evidences debt created by one or more disbursements made by Lender to Mortgagor pursuant to the Loan Agreement to finance the cost of construction of certain improvements upon the Real Estate and this Mortgage is a construction mortgage as such term is defined in Section 9-313(1)(c) of the Code.

37. Future Advances. This Mortgage secures future advances from Lender to Mortgagor made pursuant to the Loan Agreement not to exceed in the aggregate at any one time the principal sum of One Million Six Hundred Thousand and 00/100 Dollars (\$1,600,000.00), together with all interest, costs and expenses incurred by Lender in enforcing all obligations under any or all of this Mortgage, the Loan Agreement, the Note, and the other Loan Documents, to the same extent as if such future advances were made on the date of the execution of this Mortgage. All advances required hereunder or under the Loan Agreement are obligatory advances up to the credit limit of One Million Six Hundred Thousand and 00/100 Dollars (\$1,600,000.00) established in the Loan Agreement and shall, to the extent permitted by law, have priority over mechanics' and materialmen's liens, if any, arising after this Mortgage is recorded.

It is understood that at any time before the cancellation and release of this Mortgage, that the Note, the Construction Loan Agreement, this Mortgage and any of the Loan Documents, including the terms of repayment thereof, may from time to time be modified or amended in writing by Lender and Mortgagor to include any future advance or

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advances for any purpose made by Lender, at its option, to or for the benefit of Mortgagor. Mortgagor covenants and agrees that this Mortgage secures on a priority basis any and all such future advance or advances whether such advances are of the same or a different kind or quality as the original advances, whether or not related to the original advances together with the specified interest thereon, as well as the hereinbefore described principal and interest now evidenced by the Note, and the Loan Agreement; provided, however, that the total aggregate principal amount secured hereby shall not exceed One Million Six Hundred Thousand and 00/100 Dollars (\$1,600,000.00) at any one time. Nothing contained in this Paragraph 37 shall be construed as limiting the interest which may be secured hereby or the amount or amounts secured hereby to protect the real estate security.

38. Additional Insurance Requirements. During any period of construction on the Property, Mortgagor shall cause to be furnished to Lender, premium prepaid, insurance policies covering the Property on an "All Risk" perils, including theft, "Builder's Risk", non-reporting "Completed Value" form in companies and forms satisfactory to Lender, and in amounts equal to the replacement costs of the improvements on the Property (including, but not limited to, construction materials and personal property on or off site) covering insurance risks no less broad than those covered under a Standard Multi Peril (SMP) policy form, which contains a 1987 Commercial ISO "Causes of Loss-Special Form", with coverage for such other expenses as Lender may require, including, but not limited to: debris removal; cost of demolition of the undamaged portion of a building when required by code or ordinance; increased cost of reconstruction to conform with current code or ordinance requirements; real estate property taxes; architect, engineering, and consulting fees; legal and accounting fees, including, but not limited to, the cost of in-house attorneys and paralegals; advertising and promotional expenses; interest on money borrowed, additional commissions incurred upon re-negotiating leases and any and all other expenses which may be incurred as a result of any property loss or destruction by an insured. Such insurance shall contain an agreed amount endorsement (such amount to include, but not limited to, foundation and underground pipes) and bear a one hundred percent (100%) co-insurance clause. The deductible shall be not more than One Hundred Thousand and No/100 Dollars (\$100,000.00). Said policies shall contain a standard mortgagee clause naming Lender as mortgagee and a permission to occupy endorsement.

This Paragraph 38 does not obviate or otherwise affect requirements of Paragraph 6, which requirements remain as a part of this Mortgage in their entirety. All insurance required by this Paragraph 38 shall provide for thirty (30) days' written notice to Lender prior to any cancellation, non-renewal, or material change in coverage and shall be in compliance with the applicable requirements of Paragraph 6.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage.

MORTGAGOR:
SHEFFIELD PARTNERS, L.L.C., an Illinois
limited liability company

By: 

Name: **RICHARD P. WEXNER**

Its: **Manager**

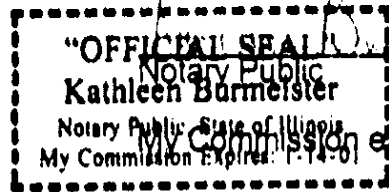
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Execution: 04/23/98 lkh

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STATE OF ILLINOIS }
COUNTY OF COOK } SS.

I, [Signature], a notary public in and for said County, in the State aforesaid, **DO HEREBY CERTIFY** that **RICHARD P. WEXNER**, the Manager of **SHEFFIELD PARTNERS, L.L.C.**, an Illinois limited liability company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument, on behalf of the corporation and as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 10 day of April, 1998.



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EXHIBIT "A"

Legal Description

PARCEL 1:

LOTS 32 AND 33 IN SUBDIVISION OF BLOCK 5 IN BLOCK 5, IN SHEFFIELD ADDITION SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 34 IN SUBDIVISION OF BLOCK 5 IN BLOCK 5 IN SHEFFIELD ADDITION IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1945 North Sheffield
Chicago, Illinois

PERMANENT INDEX NOS: 14-32-407-011
14-32-407-012

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EXHIBIT "B"

Permitted Encumbrances

Current taxes which are not yet due and payable.

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EXHIBIT "C"

Leases

See Rent Roll dated 4/30/78

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EXHIBIT "D"

Compliance Exceptions

None

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