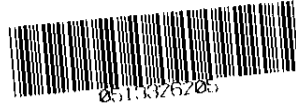


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Doc#: 0513326205  
Eugene "Gene" Moore Fee: \$60.00  
Cook County Recorder of Deeds  
Date: 05/13/2005 03:33 PM Pg: 1 of 19

This Document Prepared By  
and After Recording Return To:

James R. Theiss  
Chapman and Cutler  
111 West Monroe Street  
Chicago, Illinois 60603

NCS-157917  
DEC  
14 of 16 AP

SPACE ABOVE THIS LINE RESERVED FOR  
RECORDER'S USE ONLY

## MORTGAGE AND SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS

This Mortgage and Security Agreement with Assignment of Rents (this "*Mortgage*") dated as of May 6, 2005 from SHOE FACTORY ROAD L.L.C., an Illinois limited liability company with its mailing address at 1301 West 22<sup>nd</sup> Street, Suite 210, Oak Brook, Illinois 60523 (being hereinafter referred to as "*Mortgagor*") to HARRIS TRUST AND SAVINGS BANK, an Illinois banking corporation with its mailing address at 111 West Monroe Street, Chicago, Illinois 60690 (hereinafter referred to as "*Agent*"), as Agent for the Banks (as hereinafter defined) (Agent, acting as such agent and any successor to Agent, in such capacity being hereinafter referred to as "*Mortgagee*");

### WITNESSETH THAT:

WHEREAS, Mortgagor has executed and delivered a promissory note bearing even date herewith in the principal amount of \$14,590,000, such promissory note made payable to the order of Mortgagee for the benefit of the Banks in and by which Mortgagor promises to pay said principal sum together with interest thereon prior to maturity at the rates and at the times specified in the Loan Agreement (as hereinafter defined), with a final maturity of all principal and interest not required to be sooner paid of May 6, 2007 (such promissory note and any and all extensions and renewals thereof and any notes issued in replacement or substitution therefor being hereinafter referred to as the "*Note*"); and

WHEREAS, the Note has been issued under and subject to certain provisions of a Loan Agreement bearing even date herewith (such Loan Agreement, as amended, modified or restated from time to time, being hereinafter referred to as the "*Loan Agreement*");

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NOW, THEREFORE, to secure (i) the payment of the principal and premium, if any, of and interest on the Note as and when the same becomes due and payable (whether by lapse of time, acceleration or otherwise) and all advances now or hereafter evidenced thereby, (ii) the payment of all other indebtedness, obligations and liabilities which this Mortgage secures pursuant to any of its terms and (iii) the observance and performance of all covenants and agreements contained herein or in the Note, the Loan Agreement or in any other instrument or document at any time evidencing or securing any of the foregoing or setting forth terms and conditions applicable thereto (all of such indebtedness, obligations and liabilities described in clauses (i), (ii) and (iii) above being hereinafter collectively referred to as the "*indebtedness hereby secured*"), Mortgagor does hereby grant, bargain, sell, convey, mortgage, warrant, assign, and pledge unto Mortgagee, its successors and assigns, and grant to Mortgagee, its successors and assigns, a continuing security interest in, all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI and VII below, all of the same being collectively referred to herein as the "*Mortgaged Premises*":

## GRANTING CLAUSE I

That certain real estate lying and being in the County of Cook and State of Illinois more particularly described in *Schedule I* attached hereto and made a part hereof.

## GRANTING CLAUSE II

All buildings and improvements of every kind and description heretofore or hereafter erected or placed on the property described in Granting Clause I and all materials intended for construction, reconstruction, alteration and repairs of the buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the said real estate, and all fixtures, machinery, apparatus, equipment, fittings and articles of personal property of every kind and nature whatsoever now or hereafter attached to or contained in or used or useful in connection with said real estate and the buildings and improvements now or hereafter located thereon and the operation, maintenance and protection thereof, including but not limited to all machinery, motors, fittings, radiators, awnings, shades, screens, all gas, coal, steam, electric, oil and other heating, cooking, power and lighting apparatus and fixtures, all fire prevention and extinguishing equipment and apparatus, all cooling and ventilating apparatus and systems, all plumbing, incinerating, and sprinkler equipment and fixtures, all elevators and escalators, all communication and electronic monitoring equipment, all window and structural cleaning rigs and all other machinery and equipment of every nature and fixtures and appurtenances thereto and all items of furniture, appliances, draperies, carpets, other furnishings, equipment and personal property used or useful in the operation, maintenance and protection of the said real estate and the buildings and improvements now or hereafter located thereon and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said real estate, buildings or improvements in any manner, and all proceeds thereof; it being mutually agreed, intended and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and, for the purpose of this Mortgage, to be real estate and covered by this Mortgage; and as to the balance of the

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property aforesaid, this Mortgage is hereby deemed to be as well a Security Agreement under the provisions of the Uniform Commercial Code of the State of Illinois for the purpose of creating hereby a security interest in said property, which is hereby granted by Mortgagor as debtor to Mortgagee as secured party, securing the indebtedness hereby secured. The addresses of Mortgagor (debtor) and Mortgagee (secured party) appear at the beginning hereof.

## GRANTING CLAUSE III

All right, title and interest of Mortgagor now owned or hereafter acquired in and to all and singular the estates, tenements, hereditaments, privileges, easements, licenses, franchises, appurtenances and royalties, mineral, oil, and water rights belonging or in any wise appertaining to the property described in the preceding Granting Clause I and the buildings and improvements now or hereafter located thereon and the reversions, rents, issues, revenues and profits thereof, including all interest of Mortgagor in all rents, issues and profits of the aforementioned property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advanced rent or for security) under any and all leases or subleases and renewals thereof, or under any contracts or options for the sale of all or any part of, said property (including during any period allowed by law for the redemption of said property after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the indebtedness hereby secured and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair or diminish the obligations of Mortgagor under the provisions of such leases or other agreements nor shall such obligations be imposed upon Mortgagee. By acceptance of this Mortgage, Mortgagee agrees, not as a limitation or condition hereof, but as a personal covenant available only to Mortgagor that until an Event of Default (as hereinafter defined) shall occur giving Mortgagee the right to foreclose this Mortgage, Mortgagor may collect, receive (but not more than 30 days in advance) and enjoy such rents.

## GRANTING CLAUSE IV

All plans, specifications, working drawings and like materials prepared in connection with improvements constituting part of the Mortgaged Premises, whether now owned by Mortgagor or hereafter acquired, all rights of Mortgagor against vendors or manufacturers in connection with equipment located upon the Mortgaged Premises whether now existing or hereafter acquired and whether arising by virtue of warranty or otherwise, and all rights against contractors, sub-contractors and materialmen arising in connection with work performed at or on the Mortgaged Premises or with materials furnished for the construction of improvements at or on the Mortgaged Premises and all rights of Mortgagor under contracts to provide any of the foregoing, whether now existing or hereafter arising.

## GRANTING CLAUSE V

All judgments, awards of damages, settlements and other compensation heretofore or hereafter made resulting from condemnation proceedings or the taking of the property described in Granting Clause I or any part thereof or any building or other improvement now or at any time

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hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damage, and any award for change of grade of streets (collectively, "*Condemnation Awards*") and all insurance policies maintained by Mortgagor in connection with the property described in Schedule I attached hereto and all proceeds hereof.

## GRANTING CLAUSE VI

All property and rights, if any, which are by the express provisions of this Mortgage required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter, by installation or writing of any kind, be subjected to the lien hereof by Mortgagor or by anyone in Mortgagor's behalf.

## GRANTING CLAUSE VII

All rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the property described in Granting Clause I or any part thereof.

TO HAVE AND TO HOLD the Mortgaged Premises and the properties, rights and privileges hereby granted, bargained, sold, conveyed, mortgaged, warranted, pledged and assigned, and in which a security interest is granted, or intended so to be, unto Mortgagee, its successors and assigns, forever; *provided, however*, that this Mortgage is upon the express condition that if the principal of and interest on the Note and all sums from time to time advanced thereon shall be paid in full and all other indebtedness hereby secured shall be fully paid and performed and any commitment to advance funds contained in the Loan Agreement shall have terminated, then this Mortgage and the estate and rights hereby granted shall cease, determine and be void and this Mortgage shall be released by Mortgagee upon the written request and at the expense of Mortgagor, otherwise to remain in full force and effect.

It is expressly understood and agreed that the indebtedness hereby secured will in no event exceed two hundred percent (200%) of (i) the total face amount of the Note plus (ii) the total interest which may hereafter accrue under the Note on such face amount plus (iii) any fees, costs or expenses which may be payable hereunder or under the Loan Agreement.

Mortgagor hereby covenants and agrees with Mortgagee as follows:

1. *Payment of the Indebtedness.* The indebtedness hereby secured will be promptly paid as and when the same becomes due.

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2. *Ownership of Mortgaged Premises.* Mortgagor covenants and warrants that it is lawfully seized of and has good and marketable title to the Mortgaged Premises free and clear of all liens, charges and encumbrances whatever except those exceptions to title listed on *Schedule II* attached hereto (the "*Permitted Exceptions*") and Mortgagor has good right, full power and authority to convey, transfer and mortgage the same to Mortgagee for the uses and purposes set forth in this Mortgage; and Mortgagor will warrant and forever defend the title to the Mortgaged Premises subject to the Permitted Exceptions against all claims and demands whatsoever.

3. *Further Assurances.* Mortgagor will execute and deliver such further instruments and do such further acts as may be necessary or proper to carry out more effectively the purpose of this Mortgage and, without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the Granting Clauses hereof or intended so to be.

4. *Possession.* Provided no Event of Default has occurred and is continuing hereunder, Mortgagor shall be suffered and permitted to remain in full possession, enjoyment and control of the Mortgaged Premises, subject always to the observance and performance of the terms of this Mortgage.

5. *Payment of Taxes.* Mortgagor shall pay before any penalty attaches, all general taxes and all special taxes, special assessments, water, drainage and sewer charges and all other charges of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed, imposed or charged on or against the Mortgaged Premises or any part thereof and which, if unpaid, might by law become a lien or charge upon the Mortgaged Premises or any part thereof, and shall, upon written request, exhibit to Mortgagee official receipts evidencing such payments, except that, unless and until foreclosure, distraint, sale or other similar proceedings shall have been commenced, no such charge or claim need be paid if being contested (except to the extent any full or partial payment shall be required by law), after notice to Mortgagee, by appropriate proceedings which shall operate to prevent the collection thereof or the sale or forfeiture of the Mortgaged Premises or any part thereof to satisfy the same, conducted in good faith and with due diligence and if Mortgagor shall have furnished such security, if any, as may be required in the proceedings or requested by Mortgagee.

6. *Payment of Taxes on Note, Mortgage or Interest of Mortgagee.* Mortgagor agrees that if any tax, assessment or imposition upon this Mortgage, the Loan Agreement or the indebtedness hereby secured or the Note or the interest of Mortgagee in the Mortgaged Premises or upon Mortgagee or any Bank by reason of or as a holder of any of the foregoing (including, without limitation, corporate privilege, franchise and excise taxes, but excepting therefrom any income tax on interest payments on the principal portion of the indebtedness hereby secured imposed by the United States or any state) is levied, assessed or charged, then, unless all such taxes are paid by Mortgagor to, for or on behalf of Mortgagee or such Bank as they become due and payable (which Mortgagor agrees to do upon demand of Mortgagee or such Bank, to the extent permitted by law), or Mortgagee or such Bank is reimbursed for any such sum advanced by Mortgagee or such Bank, all sums hereby secured shall become immediately due and payable, at the option of Mortgagee or such Bank upon thirty (30) days' notice to Mortgagor, notwithstanding anything contained herein or in any law heretofore or hereafter enacted,

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including any provision thereof forbidding Mortgagor from making any such payment. Mortgagor agrees to exhibit to Mortgagee or any Bank, upon request, official receipts showing payment of all taxes and charges which Mortgagor is required to pay hereunder.

7. *Recordation and Payment of Taxes and Expenses Incident Thereto.* Mortgagor will cause this Mortgage, all mortgages supplemental hereto and any financing statement or other notice of a security interest required by Mortgagee at all times to be kept, recorded and filed at its own expense in such manner and in such places as may be required by law for the recording and filing or for the rerecording and refiling of a mortgage, security interest, assignment or other lien or charge upon the Mortgaged Premises, or any part thereof, in order fully to preserve and protect the rights of Mortgagee hereunder and, without limiting the foregoing, Mortgagor will pay or reimburse Mortgagee for the payment of any and all taxes, fees or other charges incurred in connection with any such recordation or rerecording, including any documentary stamp tax or tax imposed upon the privilege of having this Mortgage or any instrument issued pursuant hereto recorded.

8. *Eminent Domain.* Mortgagor acknowledges that Condemnation Awards have been assigned to Mortgagee in accordance with the terms of the Loan Agreement, which awards Mortgagee is hereby irrevocably authorized to collect and receive, and to give appropriate receipts and acquittances therefor, and at Mortgagee's option, to apply the same toward the payment of the amount owing on account of the indebtedness hereby secured in such order as Mortgagee may elect and whether or not the same may then be due and payable or otherwise adequately secured, and Mortgagor covenants and agrees that Mortgagor will give Mortgagee immediate notice of the actual or threatened commencement of any proceedings under condemnation or eminent domain affecting all or any part of the Mortgaged Premises or any improvements now or hereafter erected thereon and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further covenants and agrees to make, execute and deliver to Mortgagee, at any time or times upon request by Mortgagee, free, clear and discharged of any encumbrances of any kind whatsoever, any and all further assignments and/or instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards and other compensation heretofore and hereafter to be made to Mortgagor for any taking, either permanent or temporary, under any such proceeding.

9. *Construction, Repair, Waste, Etc.* Except as contemplated in the Loan Agreement, Mortgagor agrees that no building or other improvement on the Mortgaged Premises and constituting a part thereof shall be altered, removed or demolished nor shall any fixtures or appliances on, in or about said buildings or improvements be severed, removed, sold or mortgaged, without the consent of Mortgagee 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 hereby, Mortgagor covenants that the same will 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 security interest in or encumbrance thereon or reservation of title thereto; to permit, commit or suffer no waste, impairment or deterioration of the Mortgaged Premises or any part thereof; to keep and maintain said Mortgaged Premises and every part thereof in good and first class repair and condition; to effect such repairs as Mortgagee may reasonably require and from time to time to make all needful and proper replacements and additions so that said buildings, fixtures,

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machinery and appurtenances will, at all times, be in good and first class condition, fit and proper for the respective purposes for which they were originally erected or installed; to comply with all statutes, orders, requirements or decrees relating to the Mortgaged Premises by any federal, state or municipal authority; to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions which are applicable to the Mortgaged Premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Mortgaged Premises or any part thereof and not to initiate or acquiesce in any changes to or terminations of any of the foregoing or of zoning classifications affecting the use to which the Mortgaged Premises or any part thereof may be put without the prior written consent of Mortgagee; and to make no material alterations in or improvements or additions to the Mortgaged Premises except as required by governmental authority or as permitted by Mortgagee.

10. *Liens and Encumbrances.* Mortgagor will not, without the prior written consent of Mortgagee, directly or indirectly, create or suffer to be created or to remain and will discharge or promptly cause to be discharged any mortgage, lien, encumbrance or charge on, pledge of, or conditional sale or other title retention agreement with respect to, the Mortgaged Premises or any part thereof, whether superior or subordinate to the lien hereof, except for the lien of this Mortgage, the Permitted Exceptions and mechanics' liens arising during the course of construction over which Mortgagor has obtained title insurance coverage as required by the Loan Agreement.

11. *Right of Mortgagee to Perform Mortgagor's Covenants, Etc.* If Mortgagor shall fail to make any payment or perform any act required to be made or performed hereunder, Mortgagee, without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Mortgagor, and may enter upon the Mortgaged Premises or any part thereof for such purpose and take all such action thereon as, in the opinion of Mortgagee or such Bank, may be necessary or appropriate therefor. All sums so paid by Mortgagee or any Bank and all costs and expenses (including, without limitation, attorneys' fees and expenses) so incurred, together with interest thereon from the date of payment or incurrence at the Default Rate, shall constitute so much additional indebtedness hereby secured and shall be paid by Mortgagor to Mortgagee on demand. Mortgagee or any Bank in making any payment authorized under this Section relating to taxes or assessments may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim thereof. Mortgagee, in performing any act hereunder, shall be the sole judge of whether Mortgagor is required to perform same under the terms of this Mortgage.

12. *After-Acquired Property.* Any and all property hereafter acquired which is of the kind or nature herein provided, or intended to be and become subject to the lien hereof, shall *ipso facto*, and without any further conveyance, assignment or act on the part of Mortgagor, become and be subject to the lien of this Mortgage as fully and completely as though specifically described herein; but nevertheless Mortgagor shall from time to time, if requested by Mortgagee, execute and deliver any and all such further assurances, conveyances and assignments as

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Mortgagee may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Mortgage all such property.

13. *Inspection by Mortgagee or Banks.* Mortgagee, any Bank and any participant in the indebtedness hereby secured shall have the right to inspect the Mortgaged Premises at all reasonable times, and access thereto shall be permitted for that purpose.

14. *Subrogation.* Mortgagor acknowledges and agrees that Mortgagee shall be subrogated to any lien discharged out of the proceeds of the loan evidenced by the Note or out of any advance by Mortgagee hereunder or under the Loan Agreement, irrespective of whether or not any such lien may have been released of record.

15. *Events of Default.* Any one or more of the following shall constitute an "Event of Default" hereunder:

(a) default in the payment when due of the principal of or interest on the Note (whether at the stated maturity thereof or any other time provided for in this Mortgage) or any indebtedness hereby secured or default in the payment when due of any other fee or amount payable by the Mortgagor hereunder or under the Note, the Loan Agreement or any Additional Collateral Document which default (as to interest or fees, but not principal) is not cured within five (5) days after such payment is due; or

(b) default in the observance or performance of any other covenant, condition, agreement or provision hereof or of the Note, Mortgage or any Additional Collateral Document which is not remedied within thirty (30) days after the earlier of (i) the date on which such failure shall first become known to any officer of the Mortgagor or (ii) written notice thereof to the Mortgagor by the Mortgagee; or

(c) any representation or warranty made by the Mortgagor herein or in the Note or any Additional Collateral Documents or in any statement or certificate furnished pursuant hereto or thereto, or in connection with any extension of credit made hereunder, proves untrue in any material respect as of the date of the issuance or making thereof; or

(d) Mortgagor or Mortgagee are notified by any Governmental Body or official that the Mortgaged Premises do not or will not comply with any Governmental Requirements and the deficiency is not corrected within sixty (60) days after such notification; or

(e) the Mortgaged Premises or any portion thereof, is sold, transferred, encumbered or conveyed in any manner whatsoever without the prior written consent of the Banks or as permitted by this Mortgage; or

(f) any event occurs or condition exists which is specified as an event of default (after giving effect to any applicable grace or cure periods) under the Note or any Additional Collateral Document; or



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(g) any default shall be declared, and all notice and grace periods shall have expired, with respect to any indebtedness, obligation or liability of the Mortgagor and/or any land trust in which the Mortgagor owns beneficial interests at any time owing to the Mortgagee or any such indebtedness, obligation or liability shall not be paid when due (whether by lapse of time, acceleration or otherwise), and all notice and grace periods have expired; or

(h) any judgment or judgments, writ or writs or warrant or warrants of attachment or any similar process or processes in an aggregate amount in excess of \$100,000 shall be entered or filed against the Mortgagor or the Guarantor or against any of their respective property or assets and remains unsatisfied, unvacated, unbonded or unstayed for a period of thirty (30) days; or

(i) Mortgagor or the Guarantor shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) not pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its property or assets, (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) take any corporate action in furtherance of any matter described in parts (i) through (v) above, or (vii) fail to contest in good faith any appointment or proceeding described in Section 15 (k) hereof; or

(j) a custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for the Mortgagor or the Guarantor or any substantial part of any of their respective property or assets, or a proceeding described in Section 15(j)(v) shall be instituted against the Mortgagor or the Guarantor, and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty (60) days.

16. *Remedies.* When any Event of Default has happened and is continuing (regardless of the pendency of any proceeding which has or might have the effect of preventing Mortgagor from complying with the terms of this instrument and of the adequacy of the security for the Note) and in addition to such other rights as may be available under applicable law or under the Loan Agreement, but subject at all times to any mandatory legal requirements:

(a) *Acceleration.* Mortgagee may, by written notice to Mortgagor, declare the Note and all unpaid indebtedness hereby secured, including any interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind.

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(b) *Uniform Commercial Code.* Mortgagee shall, with respect to any part of the Mortgaged Premises constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by the Uniform Commercial Code, have all the rights, options and remedies of a secured party under the Uniform Commercial Code of Illinois, including without limitation, the right to the possession of any such property, or any part thereof, and the right to enter without legal process any premises where any such property may be found. Any requirement of said Uniform Commercial Code for reasonable notification shall be met by mailing written notice to Mortgagor at its address above set forth at least ten (10) days prior to the sale or other event for which such notice is required. The costs and expenses of retaking, selling, and otherwise disposing of said property, including attorneys' fees and legal expenses incurred in connection therewith, shall constitute so much additional indebtedness hereby secured and shall be payable upon demand with interest at the Default Rate.

(c) *Foreclosure.* Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage.

(d) *Appointment of Receiver.* Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Premises, be entitled to have a receiver appointed of all or any part of the Mortgaged Premises and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(e) *Taking Possession, Collecting Rents, Etc.* Mortgagee may enter and take possession of the Mortgaged Premises or any part thereof and manage, operate, insure, repair and improve the same and take any action which, in Mortgagee's judgment, is necessary or proper to conserve the value of the Mortgaged Premises. Mortgagee may also take possession of, and for these purposes use, any and all personal property contained in the Mortgaged Premises and used in the operation, rental or leasing thereof or any part thereof. Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues and profits of the Mortgaged Premises or any part thereof (and for such purpose Mortgagor does hereby irrevocably constitute and appoint Mortgagee its true and lawful attorney-in-fact for it and in its name, place and stead to receive, collect and receipt for all of the foregoing, Mortgagor irrevocably acknowledging that any

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payment made to Mortgagee hereunder shall be a good receipt and acquittance against Mortgagor to the extent so made) and to apply same to the reduction of the indebtedness hereby secured or, at its option, to the completion of the improvements contemplated by the Loan Agreement. The right to enter and take possession of the Mortgaged Premises and use any personal property therein, to manage, operate and conserve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any receiver's fees, counsels' fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be so much additional indebtedness hereby secured which Mortgagor promises to pay upon demand together with interest at the Default Rate. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee. Without taking possession of the Mortgaged Premises, Mortgagee may, in the event the Mortgaged Premises becomes vacant or is abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Premises (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional indebtedness hereby secured payable upon demand with interest thereon at the Default Rate.

17. *Waiver of Right to Redeem From Sale - Waiver of Appraisal, Valuation, Etc.* Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, 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. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety. In the event of any sale made under or by virtue of this Mortgage, the whole of the Mortgaged Premises may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Mortgagee may determine. Mortgagee shall have the right to become the purchaser at any sale made under or by virtue of this Mortgage and Mortgagee so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Mortgagee with the amount payable to Mortgagee out of the net proceeds of such sale. In the event of any such sale, the Note and the other indebtedness hereby secured, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Mortgagor hereby waives any and all rights of redemption prior to or from sale under any order or decree of foreclosure pursuant to rights herein granted, on behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Mortgaged Premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law.

18. *Costs and Expenses of Foreclosure.* In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraisers' fees, environmental auditors' fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as the items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and

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examination, guarantee policies, Torrens certificates and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Premises, all of which expenditures shall become so much additional indebtedness hereby secured which Mortgagor agrees to pay and all of such shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Rate.

19. *Application of Proceeds.* The proceeds of any foreclosure sale of the Mortgaged Premises or of any sale of property pursuant to Section 16(b) hereof shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Sections 16(b) and 18 hereof; Second, to all other items which under the terms hereof constitute indebtedness hereby secured in addition to that evidenced by the Note with interest thereon as herein provided; Third, to all principal of and interest on the Note with any overplus to whomsoever the Bank shall reasonably determine to be lawfully entitled to the same.

20. *Deficiency Decree.* If at any foreclosure proceeding the Mortgaged Premises shall be sold for a sum less than the total amount of indebtedness for which judgment is therein given, the judgment creditor shall be entitled to the entry of a deficiency decree against Mortgagor and against the property of Mortgagor for the amount of such deficiency; and Mortgagor does hereby irrevocably consent to the appointment of a receiver for the Mortgaged Premises and the property of Mortgagor and of the rents, issues and profits thereof after such sale and until such deficiency decree is satisfied in full.

21. *Mortgagee's Remedies Cumulative - No Waiver.* No remedy or right of Mortgagee shall be exclusive of but shall be cumulative and in addition to every other remedy or right now or hereafter existing at law or in equity or by statute or provided for in the Loan Agreement. No delay in the exercise or omission to exercise any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee.

22. *Mortgagee Party to Suits.* If Mortgagee shall be made a party to or shall intervene in any action or proceeding affecting the Mortgaged Premises or the title thereto or the interest of Mortgagee under this Mortgage (including probate and bankruptcy proceedings), or if Mortgagee employs an attorney to collect any or all of the indebtedness hereby secured or to enforce any of the terms hereof or realize hereupon or to protect the lien hereof, or if Mortgagee shall incur any costs or expenses in preparation for the commencement of any foreclosure proceedings or for the defense of any threatened suit or proceeding which might affect the Mortgaged Premises or the security hereof, whether or not any such foreclosure or other suit or proceeding shall be actually commenced, then in any such case, Mortgagor agrees to pay to Mortgagee, immediately and without demand, all reasonable costs, charges, expenses and attorney's fees incurred by Mortgagee in any such case, and the same shall constitute so much additional indebtedness hereby secured payable upon demand with interest at the Default Rate.

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23. *Modifications Not to Affect Lien.* Mortgagee, without notice to anyone, and without regard to the consideration, if any, paid therefor, or the presence of other liens on the Mortgaged Premises, may in its discretion release any part of the Mortgaged Premises or any person liable for any of the indebtedness hereby secured, may extend the time of payment of any of the indebtedness hereby secured and may grant waivers or other indulgences with respect hereto and thereto, and may agree with Mortgagor to modifications to the terms and conditions contained herein or otherwise applicable to any of the indebtedness hereby secured (including modifications in the rates of interest applicable thereto), without in any way affecting or impairing the liability of any party liable upon any of the indebtedness hereby secured or the priority of the lien of this Mortgage upon all of the Mortgaged Premises not expressly released, and any party acquiring any direct or indirect interest in the Mortgaged Premises shall take same subject to all of the provisions hereof.

24. *Notices.* All communications provided for herein shall be in writing and shall be deemed to have been given when delivered personally or mailed by first class mail, postage prepaid, addressed to the parties hereto at their addresses as shown at the beginning of this Mortgage or to such other and different address as Mortgagor or Mortgagee may designate pursuant to a written notice sent in accordance with the provisions of this Section.

25. *Default Rate.* For purposes of this Mortgage, the term "Default Rate" shall have the meaning set forth in the Loan Agreement.

26. *Partial Invalidity.* All rights, powers and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Mortgage shall be held to be invalid, illegal or unenforceable, the validity and enforceability of the other terms of this Mortgage shall in no way be affected thereby.

27. *Successors and Assigns.* Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Mortgage contained by or on behalf of Mortgagor, or by or on behalf of Mortgagee, shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not. If more than one party signs this instrument as Mortgagor, then the term "*Mortgagor*" as used herein shall mean all of such parties, jointly and severally.

28. *Headings.* The headings in this instrument are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision hereof.

29. *Changes, Etc.* This instrument and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

30. *Definitions.* Capitalized terms not defined herein shall have those definitions as set forth in the Loan Agreement.

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31. *Agent.* Mortgagee has been appointed as the agent pursuant to the Loan Agreement. In acting under or by virtue of this Mortgage, Mortgagee shall be entitled to all rights, authorities, privileges and immunities provided in Section 10 of the Loan Agreement, all of which provisions of said Section 10 are incorporated by reference herein with the same force and effect as set forth herein.

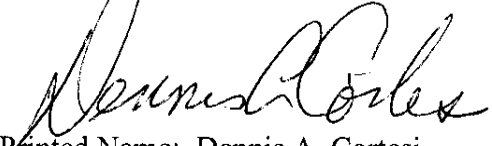
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IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed and sealed the day and year first above written.

SHOE FACTORY ROAD L.L.C., an Illinois limited liability company

By: DECO Investments Ltd., an Illinois corporation, its sole member

By   
Printed Name: Dennis A. Cortesi  
Its: President

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STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF Cook            )

I, Thomas A. McCarthy, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Dennis A. Cortesi, as the President of DECO Investments Ltd., an Illinois corporation which is the sole member of Shoe Factory Road L.L.C., an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation and limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 6th day of May, 2005.



Thomas A. McCarthy  
Notary Public

Thomas A. McCarthy  
(Type Or Print Name)

(SEAL)

Commission Expires:

\_\_\_\_\_

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## SCHEDULE I

### LEGAL DESCRIPTION

#### Legal Description:

THAT PART OF FRACTIONAL SECTION 5 AND THE NORTHEAST QUARTER OF SECTION 8, ALL IN TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF PARCEL 8 AS SHOWN ON THE PLAT OF SURVEY RECORDED JUNE 26, 1981 AS DOCUMENT NO. 25918743, POINT BEING IN THE APPROXIMATE CENTERLINE OF SHOE FACTORY ROAD; THENCE NORTH 00 DEGREES 34 MINUTES 55 SECONDS EAST (ILLINOIS STATE PLANE GRID EAST ZONE), ALONG A MONUMENTED LINE OF OCCUPATION, A DISTANCE OF 50.25 FEET TO THE SOUTHEAST CORNER OF ESSEX DRIVE AS DEDICATED BY A PLAT RECORDED AUGUST 15, 2003 AS DOCUMENT NO. 0322719109, POINT ALSO BEING THE POINT THE BEGINNING; THENCE CONTINUING NORTH 00 DEGREES 34 MINUTES 55 SECONDS EAST, ALONG THE EAST LINE OF SAID ESSEX DRIVE, A DISTANCE OF 1895.76 FEET TO THE NORTHEAST CORNER OF SAID ESSEX DRIVE; THENCE SOUTH 89 DEGREES 27 MINUTES 49 SECONDS EAST A DISTANCE OF 899.99 FEET; THENCE NORTH 00 DEGREES 34 MINUTES 55 SECONDS EAST A DISTANCE OF 973.46 FEET TO A LINE DRAWN PARALLEL WITH AND 207.50 FEET SOUTH OF, AS MEASURED PERPENDICULAR TO, THE CENTERLINE OF THE NORTHWEST TOLLWAY, SAID LINE ALSO BEING THE SOUTH LINE OF NICOR PARCEL PER A WARRANTY DEED RECORDED AS DOCUMENT NO. 17304928; THENCE NORTH 89 DEGREES 50 MINUTES 35 SECONDS EAST, ALONG SAID PARALLEL LINE, A DISTANCE OF 920.75 FEET TO A LINE DRAWN PARALLEL WITH AND 279.00 FEET WEST OF, AS MEASURED PERPENDICULAR TO, THE EAST LINE OF SAID FRACTIONAL SECTION 5, THENCE SOUTH 00 DEGREES 13 MINUTES 18 SECONDS WEST, ALONG SAID PARALLEL LINE, A DISTANCE OF 328.80 FEET; THENCE NORTH 89 DEGREES 36 MINUTES 10 SECONDS EAST A DISTANCE OF 144.66 FEET TO THE WESTERLY LINE OF AN ILLINOIS TOLLWAY PARCEL N-6A-50 PER A DEED RECORDED AS DOCUMENT 94832424; THENCE THE FOLLOWING THREE (3) COURSES AND DISTANCES ALONG SAID WESTERLY LINE; (1) THENCE SOUTH 10 DEGREES 08 MINUTES 43 SECONDS EAST A DISTANCE OF 135.76 FEET; (2) THENCE SOUTH 05 DEGREES 05 MINUTES 35 SECONDS EAST A DISTANCE OF 374.45 FEET; (3) THENCE SOUTH 03 DEGREES 42 MINUTES 48 SECONDS EAST A DISTANCE OF 468.34 FEET TO THE SOUTHEASTERLY CORNER OF SAID TOLLWAY PARCEL; THENCE NORTH 88 DEGREES 57 MINUTES 37 SECONDS EAST, ALONG THE SOUTH OF SAID PARCEL, A DISTANCE OF 34.87 FEET TO A LINE DRAWN PARALLEL WITH AND 8.25 FEET (ONE AND A HALF ROD) WESTERLY OF, AS MEASURED PERPENDICULAR TO, THE EAST LINE OF SAID FRACTIONAL SECTION 5, POINT LYING ON THE WESTERLY LINE OF OLD BEVERLY ROAD (PER COOK COUNTY DEPARTMENT OF HIGHWAY RECORDS - PAGE NUMBER 312 MAP INDEX 23); THENCE SOUTH 00 DEGREES 13 MINUTES 18 SECONDS WEST, ALONG SAID PARALLEL AND WESTERLY LINE, A DISTANCE OF 527.23 FEET TO A POINT ALONG THE NORTHERLY LINE OF SHOE FACTORY ROAD PER DOCUMENT 16052045; THENCE SOUTHWESTERLY ALONG SAID NORTHERLY LINE THE FOLLOWING THREE (3) COURSES AND DISTANCES; (1) THENCE SOUTHWESTERLY ALONG THE ARC OF A NON-TANGENTIAL CURVE, CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 1,088.23 FEET, A DISTANCE OF 97.97 FEET AND WHOSE CHORD LENGTH OF 97.93 FEET BEARS SOUTH 40 DEGREES 24 MINUTES 48 SECONDS WEST TO A POINT OF TANGENCY; (2) THENCE SOUTH 37 DEGREES 50 MINUTES 04 SECONDS WEST A DISTANCE OF 1,022.15 FEET TO A POINT OF CURVATURE; (3) THENCE SOUTHWESTERLY ALONG THE ARC OF A TANGENTIAL CURVE, CONCAVE TO THE NORTHWEST AND HAVING A RADIUS OF 681.60 FEET, A DISTANCE OF 289.06 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF SHOE FACTORY ROAD PER DOCUMENT 0021197175; THENCE WESTERLY, ALONG SAID NORTHERLY LINE, THE FOLLOWING THREE (3) COURSES AND DISTANCES; (1) THENCE NORTH 27 DEGREES 52 MINUTES 03 SECONDS WEST A DISTANCE OF 17.00 FEET; (2) THENCE WESTERLY ALONG THE ARC OF A NON-TANGENTIAL CURVE, CONCAVE TO THE NORTH AND HAVING A RADIUS OF 664.60 FEET, A DISTANCE OF 396.25 FEET AND WHOSE CHORD LENGTH OF 390.43 FEET BEARS SOUTH 79 DEGREES 12 MINUTES 44 SECONDS WEST TO A POINT OF TANGENCY; (3) THENCE NORTH 83

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DEGREES 42 MINUTES 22 SECONDS WEST A DISTANCE OF 816.80 FEET TO THE POINT OF BEGINNING,  
CONTAINING 106.1271 ACRES, MORE OR LESS, AND LYING IN COOK COUNTY, ILLINOIS.

PTN: 06-08-200-002

06-05-200-002

112 Gross Acres At Shoe Factory And Beverly  
Hoffman Estates, IL  
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## SCHEDULE II

### PERMITTED EXCEPTIONS

All these Schedule B exceptions set forth in First American Title Insurance Company's title loan policy pro forma number NCS-157917-CHI1 dated as of the date of the recording of this Mortgage.

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