

Prepared By:
Rock, Fusco & Garvey, Ltd.
350 North LaSalle Street - Suite 900
Chicago, Illinois 60610

Mail to:
Liberty Federal Bank
One Grant Square
Hinsdale, Illinois 60521

UNOFFICIAL COPY

09035612

87770021 32 001 Page 1 of 10
1999-11-03 11:09:06
Cook County Recorder 39.50



09035612

ASSIGNMENT OF LEASES AND RENTS

KNOW ALL MEN BY THESE PRESENTS, that Harris Bank Palatine, N.A., as Trustee under Trust Agreement dated May 11, 1993 and known as Trust No. 13528, having an address at 110 East Irving Park Road, Roselle, Illinois 60172, Terrestris Development Company, an Illinois corporation and Shoe Factory Road, L.L.C., an Illinois limited liability company, having an address at 1301 West 22nd Street, Suite 201, Oak Brook, Illinois 60521 (hereinafter collectively the "Assignor"), in consideration of the sum of Ten Dollars and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, does hereby assign, transfer and set over unto Liberty Federal Bank, One Grant Square, Hinsdale, Illinois 60521 (hereinafter referred to as the "Assignee"), all right, title and interest of the Assignor in, under or pursuant to any and all present or future leases or sub-leases, whether written or oral, or any lettings or possession of, or any agreements for the use or occupancy of, the whole or any part of the real estate and premises hereinafter described which the Assignor may have heretofore made or agreed to or may hereafter make or agree to, or which may be made or agreed to by the Assignee under the powers hereinafter granted, including all amendments and supplements to and renewals thereof at any time made (collectively the "Leases") relating to those certain parcels of real estate situated in the County of Cook, State of Illinois, described in Exhibit A attached hereto and made a part hereof and the improvements now or hereafter erected thereon (the "Premises"), including, without limiting the generality of the foregoing, all right, title and interest of Assignor in and to all the rents (whether fixed or contingent), earnings, renewal rents and all other sums due or which may hereafter become due under or by virtue of the Leases.

This Assignment is made and given as collateral security for, and shall secure the payment in full and the performance of all obligations, covenants, promises and agreements contained herein in the Loan Agreement ("Loan Agreement") and separate Mortgage and Security ("Mortgage") each of even date herewith, and in any and all security agreements from Assignor to the Assignee dated contemporaneously herewith ("Security Agreements").

The Assignor does hereby irrevocably constitute and appoint the Assignee the true and lawful attorney of the Assignor with full power of substitution for Assignor and in Assignor's name, place and stead to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all sums due or to become due under the Leases, with full power to settle, adjust or

UNOFFICIAL COPY

09035612

compromise any claim thereunder as fully as the Assignor could do, and to endorse the name of the Assignor on all commercial paper given in payment or in part payment thereof, and in the Assignee's discretion to file any claim or take any other action or proceeding, either in the Assignee's name or in the name of the Assignor or otherwise, which the Assignee may deem necessary or appropriate to protect and preserve the right, title and interest of the Assignee in and to such sums and the security intended to be afforded hereby.

The Assignor warrants to the Assignee that the Assignor has good right, title and interest to make this Assignment and that the Assignor has not heretofore alienated, assigned, pledged, hypothecated or otherwise disposed of any of the rights, rents and other sums due or which may hereafter become due and which are intended to be assigned hereunder.

This Assignment includes and establishes a present, absolute and primary transfer and assignment of all rents, earnings, income, issues and profits of the premises, but so long as no event of default shall exist under the Mortgage or the other security agreements, and no event shall exist which by lapse of time or service of notice, or both, has or would become an event of default thereunder, the Assignor shall have the right and license to collect, use and enjoy all rents and other sums due or to become due under and by virtue of the Leases as they respectively become due, but not in excess of one month's installment thereof paid in advance.

The Assignor hereby irrevocably consents to and authorizes and directs that the tenants or other obligor under the Leases upon demand and notice from the Assignee of the Assignee's right to receive rents and other sums hereunder, shall pay such rents and other sums to the Assignee without any obligation on the part of such tenant or other obligor to determine the actual existence of any default or event claimed by the Assignee as the basis for the Assignee's right to receive such rents or other sums and notwithstanding any notice from or claim of the Assignor to the contrary. The Assignor hereby waives any right or claim against any tenant or other obligor for any such rents and other sums paid by any tenant or other obligor to the Assignee.

Without limiting any legal rights of the Assignee as the absolute assignee of the rents, issues and profits of the premises and in furtherance thereof, Assignor agrees that in the event of default under said Mortgage or any other of the loan documents, the Assignee may, at its option, (i) take actual possession of the Premises hereinabove described, or of any part thereof, personally or by agent or attorney, and with or without force and with process of law, enter upon, take and maintain possession of all or any part of said premises together with all documents, books, records, papers and accounts relating thereto, and exclude the Assignor, its agents or servants, therefrom and hold, operate, manage and control the premises, and at the expense of the premises, from time to time, cause to be made all necessary or proper repairs, renewals, replacements, useful alterations, additions, betterments and improvements to the premises as may seem judicious, and pay taxes, assessments and prior or proper charges on the premises, or any part thereof, and insure and reinsure the same, and lease the premises in such parcels and for such times and on such terms as Assignee may deem fit, including leases for terms expiring beyond the maturity of the indebtedness secured by said Mortgage, and cancel any lease or sublease for any cause or on any ground which would

entitle the Assignor to cancel the same and in such case have the right to manage and operate the said premises and to carry on the business thereof as the Assignee shall deem proper or (ii) with or without taking possession of the premises, Assignee may proceed to enforce the Leases and collect all sums due or to become due thereunder and by so doing Assignee shall not be deemed a mortgagee in possession nor to have assumed or become responsible or liable for any obligations of Assignor arising thereunder or in respect thereof.

Any sums received by Assignee under or by virtue of this Assignment shall be applied to the payment of or on account of the following in such order and manner as Assignee may elect:

(a) to the reduction of the indebtedness hereby secured, whether or not the same may then be due or be otherwise adequately secured;

(b) to the payment of all proper charges and expenses including the just and reasonable compensation for the services of Assignee, its attorneys, agents, clerks, servants and others employed in connection with the operation, management and control of the premises and the conduct of the business thereof and, if the Assignee shall elect, to the establishment of a reserve which shall be sufficient in Assignee's judgment to indemnify it against any liability, loss or damage on account of any matter or thing done in good faith and in pursuance of the rights and powers contained herein;

(c) to the payment of any sum secured by a lien or encumbrance upon the premises; and

(d) to the cost of completing any improvements being constructed on or about the premises.

The manner of application of such sums and the items which shall be credited or paid out of same shall be within the sole discretion of Assignee and nothing herein contained shall obligate Assignee to use any such sums for a purpose other than reducing the indebtedness hereby secured unless it shall elect so to do. Assignee shall be subrogated to any lien discharged out of the rents, income and profits of the premises.

The Assignor hereby further covenants that the Assignor will upon request of the Assignee, execute and deliver such further instruments and do and perform such other acts and things as the Assignee may reasonably deem necessary or appropriate to more effectively vest in and secure to the Assignee the rights and rents which are intended to be assigned to the Assignee hereunder. Assignor irrevocably waives any right it now or hereafter may have to off-set any claim or liability owing from it to any obligor on any Lease against sums due or to become due from such obligor under any Lease.

Assignor covenants and agrees to observe and perform all of the obligations imposed on it under the Leases and not to do or permit to be done anything to impair the security thereof, not to execute any Lease on terms and conditions less satisfactory to the lessor than are usual and customary in leases with a similar term and for similar types of space in the general market area where the premises are located, not to further assign or encumber its rights under any Lease to be subordinated to any other liens or encumbrances whatsoever, any such subordination to be null and

void unless done with the written consent of Assignee. Assignor further covenants and agrees not to amend, modify or terminate any Lease without the prior written consent of Assignee, which consent will not be unreasonably withheld. Assignor further covenants and agrees that upon an Event of Default (as described in any of the Security Agreements), which Event of Default is not cured within the applicable cure period, Assignor will, at the request of Assignee, submit the executed originals of the Leases to Assignee.

Assignor warrants that it has heretofore delivered to Assignee a true and correct copy of the Leases, that the Leases have not been amended or modified in any respect, that the same continue in full force and effect and that both the lessor and the lessee thereunder are in full compliance with all of their respective covenants therein contained and that no event for terminating any Lease by either the lessor or the lessee thereunder exists.

The acceptance by the Assignee of this Assignment, with all of the rights, powers, privileges and authority so created, shall not, prior to entry upon and taking of actual physical possession of the premises by the Assignee, be deemed or construed to constitute the Assignee as a mortgagee in possession nor impose any obligation whatsoever upon the Assignee, it being understood and agreed that the Assignee does not hereby undertake to perform or discharge any obligation, duty or liability of the landlord under the Leases or under or by reason of this Assignment. Assignee shall have no liability to Assignor or any one for any action taken or omitted to be taken by it hereunder, except for its willful misconduct. Should the Assignee incur any liability, loss or damage under or by reason of this Assignment or for any action taken by the Assignee hereunder, or in defense against any claim or demand whatsoever which may be asserted against the Assignee arising out of any Lease, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the rate applicable to the Mortgage at the time of incurrence shall be secured by this Assignment and by the Mortgage, and the Assignor shall reimburse the Assignee therefore immediately upon demand, Assignor's obligation to so pay to survive payment of the indebtedness hereby secured and the release of this Assignment.

The rights and remedies of the Assignee hereunder are cumulative and are not secondary to or in lieu of but are in addition to any rights or remedies which the Assignee shall have under the said Mortgage, or any other instrument or document or under applicable law and the exercise by Assignee of any rights and remedies herein contained shall not be deemed a waiver of any other rights or remedies of Assignee, whether arising under the Mortgage, or otherwise, each and all of which may be exercised whenever Assignee deems it in its interest to do so. The rights and remedies of the Assignee may be exercised from time to time and as often as such exercise is deemed expedient and the failure of the Assignee to enforce any of the terms, provisions and conditions of this Assignment for any period of time, at any time or times, shall not be construed or deemed to be a waiver of any rights under the terms hereof.

The right of the Assignee to collect and receive the rents assigned hereunder or to exercise any of the rights or powers herein granted to the Assignee shall, to the extent not prohibited by law,

extend also to the period from and after the filing of any suits to foreclose the liens of the Mortgage, including any period allowed by law for the redemption of the premises after any foreclosure sale.

This Assignment shall be assignable by the Assignee and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of each of the parties hereto. All provisions hereof are severable and if any provisions hereof shall be invalid or unenforceable, the validity and enforceability of the remaining provisions hereof shall in no way be affected thereby.

IN WITNESS WHEREOF, the undersigned have caused these presents to be signed as of this 29th day of October, 1999.

Assignor:

HARRIS BANK PALATINE, N.A., NOT PERSONALLY,
BUT AS TRUSTEE UNDER TRUST AGREEMENT
DATED MAY 11, 1993 AND KNOWN AS
TRUST NO. 13528

By: [Signature]
Its: Penelope M. Johns, Asst. Vice President & LTO

Attest: [Signature]
Its: Mary M. Bray, Land Trust Administrator

SEE EXCULPATORY RIDER ATTACHED
HERE TO AND MADE A PART HEREOF

TERRESTRIS DEVELOPMENT COMPANY,
an Illinois corporation

By: [Signature]
Its: President

Attest: [Signature]
Its: Secy

SHOE FACTORY ROAD, L.L.C., an
Illinois limited liability company
By Deco Investments, Ltd., an Illinois corporation
its Manager

By: [Signature]
Its: President

Attest: [Signature]
Its: Secy

By: _____

UNOFFICIAL COPY

09035612

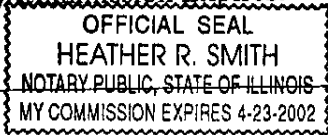
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Penelope M. Johns, Asst. Vice President & LTO Vice President of Harris Bank Palatine, N.A., and Mary M. Bray, Land Trust Administrator, Assistant Secretary, of Harris Bank Palatine, N.A., personally know to me to be the same persons whose name are subscribed to the foregoing instrument as such A.U. President and L.F.A. Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of said Harris Bank Palatine, N.A., as Trustee for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 2nd day of November, 1999.

Heather R. Smith
Notary Public

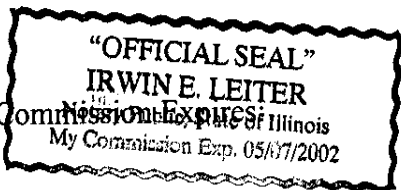
My Commission Expires:



STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

I, Irwin E. Leiter, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Dennis A. Conrad the President of Terrestris Development Company, an Illinois corporation and Baker R. Surom Asst. secretary of said corporation, who are personally known to me to be the same person whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said Terrestris Development Company, an Illinois corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 27th day of November, 1999.



Irwin E. Leiter
Notary Public

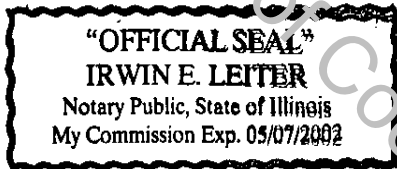
UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF Madison)

09035612

I, Irwin E. Leiter, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Dennis A. Connel the President of Deco Investments, Ltd., an Illinois corporation and Bruce R. Suomy, secretary of said corporation, as manager of Shoe Factory Road, L.L.C., an Illinois limited liability company, who are personally known to me to be the same person whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said Terrestis Development Company, an Illinois corporation, as manager of Shoe Factory Road, L.L.C., , for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 10 day of November, 1999.



[Signature]
Notary Public

My Commission Expires:

UNOFFICIAL COPY

09035612

EXHIBIT A

LEGAL DESCRIPTION

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

COMMENCING AT NORTHWEST CORNER OF PARCEL 8 AS SHOWN ON THE PLAT OF SURVEY RECORDED JUNE 26, 1981 AS DOCUMENT 25918743, POINT BEING MONUMENTED WITH A RAILROAD SPIKE SET IN THE APPROXIMATE CENTERLINE OF SHOE FACTORY ROAD; THENCE NORTH 00 DEGREES 34 MINUTES 55 SECONDS EAST, ALONG A MONUMENTED LINE OF OCCUPATION, A DISTANCE OF 1173.44 FEET TO A LINE DRAWN PARALLEL WITH AND 1942.50 FEET SOUTH OF, AS MEASURED PERPENDICULAR TO, THE OCCUPIED AND MONUMENTED CENTERLINE OF THE ILLINOIS TATE TOLL HIGHWAY AUTHORITY'S NORTHWEST TOLLWAY (I-90), POINT ALSO BEING THE POINT OF BEGINNING; THENCE SOUTH 89 DEGREES 50 MINUTES 33 SECONDS WEST, ALONG SAID PARALLEL LINE, A DISTANCE OF 1909.94 FEET TO THE EAST LINE OF THE 190.00 FEET FOOT-WIDE COMED RIGHT-OF-WAY; THENCE NORTH 00 DEGREES 04 MINUTES 04 SECONDS EAST, ALONG SAID EAST LINE A DISTANCE OF 1615.01 FEET TO THE SOUTH LINE OF THE NORTHERN ILLINOIS GAS SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 19, 1995 AS DOCUMENT NUMBER 95882889; THENCE EASTERLY AND NORTHERLY, ALONG SAID SUBDIVISION, THE FOLLOWING TWO (2) COURSES AND DISTANCE; (1) THENCE NORTH 89 DEGREES 50 MINUTES 35 SECONDS EAST A DISTANCE OF 120.00 FEET; (2) THENCE NORTH 00 DEGREES 04 MINUTES 04 SECONDS EAST A DISTANCE OF 120.00 FEET TO A LINE DRAWN PARALLEL WITH AND 207.50 FEET SOUTH, AS MEASURED PERPENDICULAR TO, THE AFOREMENTIONED CENTERLINE OF THE NORTHWEST TOLLWAY; THENCE NORTH 89 DEGREES 50 MINUTES 35 SECONDS EAST, ALONG SAID PARALLEL LINE, A DISTANCE OF 1805.50 FEET TO THE AFOREMENTIONED MONUMENTED LINE OF OCCUPATION; THENCE SOUTH 00 DEGREES 34 MINUTES 55 SECONDS WEST, ALONG SAID LINE, A DISTANCE OF 1735.14 FEET TO THE POINT OF BEGINNING.

PARCEL 2 (SURVEY PARCEL 10):

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

COMMENCING AT NORTHWEST CORNER OF PARCEL 8 AS SHOWN ON THE PLAT OF SURVEY RECORDED JUNE 26, 1981 AS DOCUMENT 25918743, POINT BEING MONUMENTED WITH A RAILROAD SPIKE SET IN THE APPROXIMATE CENTERLINE OF SHOE FACTORY ROAD, THENCE NORTH 00 DEGREES 34 MINUTES 55 SECONDS EAST (ILLINOIS TATE PLANE GRID - EAST ZONE), ALONG A MONUMENTED LINE OF OCCUPATION, A DISTANCE OF 2572.12 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 00 DEGREES 34 MINUTES 55 SECONDS EAST, ALONG SAID LINE

OF OCCUPATION, A DISTANCE OF 336.47 FEET TO A LINE DRAWN PARALLEL WITH AND 207.50 FEET SOUTH OF, AS MEASURED PERPENDICULAR TO, THE OCCUPIED AND MONUMENTED CENTERLINE OF THE ILLINOIS TATE TOLL HIGHWAY AUTHORITY'S NORTHWEST TOLLWAY (I-90); THENCE NORTH 89 DEGREES 50 MINUTES 35 SECONDS EAST, ALONG SAID PARALLEL LINE, A DISTANCE OF 1820.80 FEET TO A LINE 279.00 FEET, MORE OR LESS, WEST OF THE EAST LINE OF THE AFOREMENTIONED FRACTIONAL SECTION 5; THENCE SOUTH 00 DEGREES 13 MINUTES 18 SECONDS WEST, ALONG SAID LINE, A DISTANCE OF 328.80 FEET TO AN IRON PIPE; THENCE SOUTH 89 DEGREES 36 MINUTES 10 SECONDS WEST A DISTANCE OF 1822.98 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOT 1 IN THE PLAT OF SUBDIVISION OF PARCEL "I", BEING A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, RECORDED NOVEMBER 17, 1997 AS DOCUMENT 97857293.

PARCEL 4:

EASEMENTS FOR THE BENEFIT OF PARCEL 3 AS GRANTED IN DECLARATION OF EASEMENTS AND MAINTENANCE AGREEMENT DATED OCTOBER 1, 1997 AND RECORDED NOVEMBER 17, 1997 AS DOCUMENT 97857294 FOR THE PURPOSE OF CROSS ACCESS AND EMERGENCY ACCESS OVER THOSE PORTIONS OF LOT 2 DESIGNATED AS SAID EASEMENTS IN THE PLAT OF SUBDIVISION OF PARCEL "I", BEING A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 5:

EASEMENTS FOR THE BENEFIT OF PARCEL 3 AS CREATED BY THE GRANT OF EASEMENTS DATED OCTOBER 1, 1997 AND RECORDED NOVEMBER 17, 1997 AS DOCUMENT 97860300 AND SHOWN ON GRANT OF EASEMENTS PLAT RECORDED NOVEMBER 17, 1997 AS DOCUMENT 97860299.

UNOFFICIAL COPY

09035612

EXCULPATORY RIDER

This instrument is executed by the Harris Bank Palatine, N.A. as Trustee under the provisions of a Trust Agreement dated 5/11/93, and known as Trust no. 13528, not personally, but solely as Trustee aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. This instrument is executed and delivered by the Trust solely in the exercise of the powers expressly conferred upon the Trustee under the Trust and upon the written direction of the beneficiaries and/or holders of the power of direction of said Trust and Harris Bank Palatine, N.A. warrants that it possesses full power and authority to execute this instrument. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, covenants, undertakings and agreements herein made on the part of the trustee while in form purporting to be the said representations, warranties, covenants, undertakings and agreements of said Trustee are each and every one of them not made with the intention of binding Harris Bank Palatine, N.A. in its individual capacity, but are made and intended solely for the purpose of binding only that portion of the Trust property specifically described herein. No personal liability or personal responsibility is assumed by or nor shall at any time be asserted or enforceable against the Harris Bank of Palatine, N.A. on account of any representations, Warranties, (including but not limited to any representations and/or warranties in regards to potential and/or existant Hazardous Waste) covenants, undertakings and agreements contained in the instrument, (including but not limited to any indebtedness accruing plus interest hereunder) either express or implied or arising in any way out of the transaction in connection with which this instrument is executed, all such personal liability or responsibility, if any, being expressly waived and released, and any liability (including any and all liability for any violation under the Federal and/or State Environmental or Hazardous Waste laws) hereunder being specifically limited to the Trust assets, if any, securing this instrument. Any provision of this instrument referring to a right of any person to be indemnified or held harmless, or reimbursed by the Trustee for any costs, claims, losses, fines, penalties, damages, costs of any nature including attorney's fees and expenses, arising in any way out of the execution of this instrument or in connection thereto are expressly waived and released by all parties to and parties claiming, under this instrument. Any person claiming or any provision of this instrument referring to a right to be held harmless, indemnified or reimbursed for any and all costs, losses and expenses of any nature, in connection with the execution of this instrument, shall be construed as only a right of redemption out of the assets of the Trust. Notwithstanding anything in this instrument contained, in the event of any conflict between the body of this exoneration and the body of this instrument, the provisions of this paragraph shall control. Trustee being fully exempted, nothing herein contained shall limit the right of any party to enforce the personal liability of any other party to this instrument.