

92418594

MORTGAGE (Participation)

This mortgage made and entered into this 1st day of June 19 92, by and between Adolfo Pena and Graciela Pena, his wife, as joint tenants (hereinafter referred to as mortgagor) and Albany Bank & Trust Company N.A. (hereinafter referred to as mortgagee), who maintains an office and place of business at 3400 W. Lawrence Avenue, Chicago, IL 60625

WITNESSETH, that for the consideration hereinafter stated, receipt of which is hereby acknowledged, the mortgagor does hereby mortgage, sell, grant, assign, and convey unto the mortgagee, his successors and assigns, all of the following described property situated and being in the County of Cook State of Illinois

Lot 43 and the North 1/2 of Lot 42 in Block 2 in A. H. Hill and Company's North Western Elevated Railroad Addition, a Subdivision of the North 1/2 of the Southwest 1/4 of the Northeast 1/4 of Section 14, Township 40 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

Commonly known as 4547 N. St. Louis Avenue, Chicago, IL 60625.

PIN #13-14-215-005

92418594

DEPT. OF RECORDING \$31.50 743333 TRAM 7095 06/11/92 14156100 49283 \$ 92-418594 COOK COUNTY RECORDER

Together with and including all buildings, all fixtures including but not limited to all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning apparatus, and elevators (the mortgagor hereby certifying that it is intended that the items herein enumerated shall be deemed to have been permanently installed as part of the realty), and all improvements now or hereafter existing thereon, the hereinafter and appurtenances and all other rights thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, all rights of redemption, and the rents, issues, and profits of the above described property (provided, however, that the mortgagor shall be entitled to the possession of said property and to collect and retain the rents, issues, and profits until default hereunder). To have and to hold the same unto the mortgagee and the successors in interest of the mortgagee forever in fee simple or such other estate, if any, as is stated herein.

Mortgagor hereby releases and waives all claims under and by virtue of the homestead exemption laws of the State of Illinois, the mortgagor covenants that he is lawfully seized and possessed of and has the right to sell and convey said property, that the same is free from all encumbrances except as hereinabove recited, and that he hereby binds himself and his successors in interest to warrant and defend the title aforesaid thereto and every part thereof against the claims of all persons whomsoever.

This instrument is given to secure the payment of a promissory note dated June 1, 1992 in the principal sum of \$ 49,000.00 signed by Adolfo Pena and Carlos Iniguez

in behalf of Milwaukee Shoes, Inc. The real estate described herein shall also secure any other liabilities, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, of mortgagor or its successors and assigns; provided, however, that in no event shall this mortgage secure indebtedness of the mortgagor to the mortgagee in an amount exceeding \$ 100,000.00.

THIS INSTRUMENT PREPARED BY: William L. Baxter, Sr. Vice President Albany Bank & Trust Company N.A. 3400 W. Lawrence Avenue Chicago, IL 60625

31.50

MAC 9250811

92418594

UNOFFICIAL COPY

1. The mortgagor covenants and agrees as follows:

a. He will promptly pay the indebtedness evidenced by said promissory note at the times and in the manner therein provided.

b. He will pay all taxes, assessments, water rates, and other governmental or municipal charges, fines, or impositions, for which provision has not been made hereinbefore, and will promptly deliver the official receipts therefor to the said mortgagee.

c. He will pay such expenses and fees as may be incurred in the protection and maintenance of said property, including the fees of any attorney employed by the mortgagee for the collection of any or all of the indebtedness hereby secured, or foreclosure by mortgagee's sale, or court proceedings, or in any other litigation or proceeding affecting said property. Attorneys' fees reasonably incurred in any other way shall be paid by the mortgagor.

d. For better security of the indebtedness hereby secured, upon the request of the mortgagee, its successors or assigns, he shall execute and deliver a supplemental mortgage or mortgages covering any additions, improvements, or betterments made to the property hereabove described and all property acquired by it after the date hereof (all in form satisfactory to mortgagee). Furthermore, should mortgagor fail to cure any default in the payment of a prior or inferior encumbrance on the property described by this instrument, mortgagor hereby agrees to permit mortgagee to cure such default, but mortgagee is not obligated to do so; and such advances shall become part of the indebtedness secured by this instrument, subject to the same terms and conditions.

e. The rights created by this conveyance shall remain in full force and effect during any postponement or extension of the time of the payment of the indebtedness evidenced by said promissory note or any part thereof secured hereby.

f. He will continuously maintain hazard insurance, of such type or types and in such amounts as the mortgagee may from time to time require on the improvements now or hereafter on said property, and will pay promptly when due any premiums thereof. All insurance shall be carried in companies acceptable to mortgagee and the policies and renewals thereof shall be held by mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to the mortgagee. In event of loss, mortgagor will give immediate notice in writing to mortgagee, and mortgagee may make proof of loss if not made promptly by mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to mortgagee instead of to mortgagor and mortgage jointly, and the insurance proceeds, or any part thereof, may be applied by mortgagee at its option either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged or destroyed. In event of foreclosure of this mortgage, or other transfer of title to said property in extinguishment of the indebtedness secured hereby, all right, title, and interest of the mortgagor in and to any insurance policies then in force shall pass to the purchaser or mortgagee or, at the option of the mortgagee, may be surrendered for a refund.

g. He will keep all buildings and other improvements on said property in good repair and condition; will permit, control, or suffer no waste, impairment, deterioration of said property or any part thereof; in the event of failure of the mortgagor to keep the buildings on said premises and those erected on said premises, or improvements thereon, in good repair, the mortgagee may make such repairs as in its discretion it may deem necessary for the proper preservation thereof; and the full amount of each and every such payment shall be immediately due and payable and shall be secured by the lien of this mortgage.

h. He will not voluntarily create or permit to be created against the property subject to this mortgage any lien or liens inferior or superior to the lien of this mortgage without the written consent of the mortgagee; and further, that he will keep and maintain the same free from the claim of all persons supplying labor or materials for construction of any and all buildings or improvements now being erected or to be erected on said premises.

i. He will not rent or assign any part of the rent of said mortgaged property or demolish, or remove, or substantially alter any building without the written consent of the mortgagee.

j. All awards of damages in connection with any condemnation for public use of or injury to any of the property subject to this mortgage are hereby assigned and shall be paid to mortgagee, who may apply the same to payment of the installments last due under said note, and mortgagee is hereby authorized, in the name of the mortgagor, to execute and deliver valid acquittances thereof and to appeal from any such award.

k. The mortgagee shall have the right to inspect the mortgaged premises at any reasonable time.

l. Default in any of the covenants or conditions of this instrument or of the note or loan agreement secured hereby shall terminate the mortgagor's right to possession, use, and enjoyment of the property, at the option of the mortgagee or its assigns (it being agreed that the mortgagor shall have such right until default). Upon any such default the mortgagee shall become the owner of all of the rents and profits accruing after default as security for the indebtedness secured hereby, with the right to enter upon said property for the purpose of collecting such rents and profits. This instrument shall operate as an assignment of any rents or said property to that extent.

16-51833

UNOFFICIAL COPY

3. The mortgagor covenants and agrees that if he shall fail to pay said indebtedness or any part thereof when due, or shall fail to perform any covenant or agreement of this instrument or the promissory note secured hereby, the entire indebtedness hereby secured shall immediately become due, payable, and collectible without notice, at the option of the mortgagee or assigns, regardless of maturity, and the mortgagee or his assigns may before or after entry sell said property without appraisalment (the mortgagor having waived and assigned to the mortgagee all rights of appraisalment):

(I) at judicial sale,

(II) at the option of the mortgagee, either by auction or by solicitation of sealed bids, for the highest and best bid complying with the terms of sale and manner of payment specified in the published notice of sale, first giving four weeks' notice of the time, terms, and place of such sale, by advertisement not less than once during each of said four weeks in a newspaper published or distributed in the county in which said property is situated, all other notice being hereby waived by the mortgagor (and said mortgagee, or any person on behalf of said mortgagee, may bid with the unpaid indebtedness evidenced by said note). Said sale shall be held at or on the property to be sold or at the Federal, county, or city courthouse for the county in which the property is located. The mortgagee is hereby authorized to execute for and on behalf of the mortgagor and to deliver to the purchaser at such sale a sufficient conveyance of said property, which conveyance shall contain recitals as to the happening of the default upon which the execution of the power of sale herein granted depends; and the said mortgagor hereby constitutes and appoints the mortgagee or any agent or attorney of the mortgagee, the agent and attorney in fact of said mortgagor to make such recitals and to execute said conveyance and hereby covenants and agrees that the recitals so made shall be effectual to bar all equity or right of redemption, nonestead, dower, and all other exemptions of the mortgagor, all of which are hereby expressly waived and conveyed to the mortgagee; or

(III) take any other appropriate action pursuant to state statute either in state or Federal court or otherwise for the disposition of the property.

In the event of a sale as hereinbefore provided, the mortgagor or any persons in possession under the mortgagor shall then become and be tenants holding over and shall forthwith deliver possession to the purchaser at such sale or be summarily dispossessed, in accordance with the provisions of law applicable to tenants holding over. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

4. The proceeds of any sale of said property in accordance with the preceding paragraphs shall be applied first to pay the costs and expenses of said sale, the expenses incurred by the mortgagor for the purpose of protecting or maintaining said property, and reasonable attorneys' fees; secondly, to pay the indebtedness secured hereby; and thirdly, to pay any surplus or excess to the person or persons legally entitled thereto.

5. In the event said property is sold at a judicial foreclosure sale or pursuant to the power of sale hereinabove granted, and the proceeds are not sufficient to pay the total indebtedness secured by this instrument and evidenced by said promissory note, the mortgagee will be entitled to a deficiency judgment for the amount of the deficiency without regard to appraisalment.

6. In the event the mortgagor fails to pay any Federal, state, or local tax assessment, income tax or other tax lien, charge, fee, or other expense charged against the property the mortgagee is hereby authorized at his option to pay the same. Any sums so paid by the mortgagee shall be added to and become a part of the principal amount of the indebtedness evidenced by said note, subject to the same terms and conditions. If the mortgagor shall pay and discharge the indebtedness evidenced by said promissory note, and shall pay such sums and shall discharge all taxes and liens and the costs, fees, and expenses of making, enforcing, and executing this mortgage, then this mortgage shall be canceled and surrendered.

7. The covenants herein contained shall bind and the benefits and advantages shall inure to the respective successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

8. No waiver of any covenant herein or of the obligation secured hereby shall at any time thereafter be held to be a waiver of the terms hereof or of the note secured hereby.

9. A judicial decree, order or judgment holding any provision or portion of this instrument invalid or unenforceable shall not in any way impair or preclude the enforcement of the remaining provisions or portions of this instrument.

10. Any written notice to be issued to the mortgagor pursuant to the provisions of this instrument shall be addressed to the mortgagor at 4547 N. St. Louis Avenue, Chicago, Ill. 60625 and any written notice to be issued to the mortgagee shall be addressed to the mortgagee at 3400 W. Lawrence Avenue, Chicago, Ill. 60625

(a) Mortgagor, on behalf of himself/herself and each and every person claiming by, through or under Mortgagor, hereby waives any and all rights of redemption, statutory or otherwise, without prejudice to Mortgagee's right to any remedy, legal or equitable, which Mortgagee may pursue to enforce payment or to effect collection of all or any part of the indebtedness secured by this Mortgage, and without prejudice to Mortgagee's right to a deficiency judgment or any other appropriate relief in the event of foreclosure of this Mortgage.

Environmental Rider attached hereto and made a part hereof.

3215094

16

UNOFFICIAL COPY

THIS RIDER IS ATTACHED TO AND MADE A PART OF THAT CERTAIN
TRUST DEED/MORTGAGE DATED AS OF June 1 1992
FROM: Adolfo Pena and Graciela Pena, married to each other

_____, as Mortgagor
TO: Albany Bank & Trust Company N.A., as Mortgagee/Trustee

The following paragraph is hereby added to the terms of the Mortgage:

Mortgagor represents and agrees that, except as disclosed in writing to the Mortgagee or Trustee, the premises are in compliance with "all Environmental Laws" (as hereinafter defined); that there are no conditions existing currently or likely to exist during the term of the Note that require or are likely to require clean up, removal or other remedial action; that Mortgagor is not a party to any litigation or administrative proceeding, nor, to the best of Mortgagor's knowledge, is there any litigation or administrative proceeding contemplated or threatened related to or arising out of any Environmental Laws; that neither the premises nor Mortgagor is subject to any judgment, decree, order, citation or complaint related to or arising out of any Environmental Laws; that Mortgagor has obtained all permits or licenses and filed all reports required under any applicable Environmental Laws. The term "Environmental Laws" shall mean any and all federal, state and local laws, statutes, regulations, ordinances, codes, rules, and other governmental restrictions or requirements relating to matters of environmental protection, pollution, health, safety, sanitation, or conservation, including without limitation those relating to the presence, maintenance and removal of asbestos now or any time hereafter in effect. Mortgagor covenants and agrees to comply with all applicable Environmental Laws and to require its tenants or others operating on the premises to comply with (1) applicable Environmental Laws; and to provide to Mortgagee or Trustee immediately upon receipt, copies of any correspondence of any nature whatsoever received by Mortgagor relating to Environmental Laws, and to advise Mortgagee or Trustee in writing as soon as Mortgagor becomes aware of any condition or circumstances which makes any of the representations or statements contained in this paragraph incomplete or inaccurate. In the event Mortgagee or Trustee determines in its sole and absolute discretion that there is any evidence that any such circumstance might exist, whether or not described in any communication or notice to either Mortgagor, Mortgagee or Trustee, Mortgagor agrees, at its own expense, and at no expense to Mortgagee or Trustee, to permit an environmental audit to be conducted by Mortgagee or Trustee of an independent agent selected by Mortgagee or Trustee. This provision shall not relieve Mortgagor from conducting its own environmental audits or taking any other steps necessary to comply with any Environmental Laws. If, in the opinion of Mortgagee or Trustee, there exists any uncorrected violation of an Environmental Law or any condition which requires or may require any clean up, removal, or other remedial action, and such correction, clean up, removal, or other remedial action is not completed within sixty (60) days from the date of written notice from Mortgagee or Trustee to Mortgagor, the same shall, at the option of Mortgagee or Trustee constitute a default hereunder, without further notice or cure period.

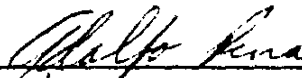
10015591


UNOFFICIAL COPY

Mortgagor agrees to indemnify, defend and hold Mortgagee or Trustee and its current, future or former officers, directors, employees and agents harmless from and against any and all losses, damages, liabilities, obligations, claims, costs and expenses (including with limitation, attorneys' fees and costs) incurred by Mortgagee or Trustee, whether prior to or after the date hereof and whether direct, indirect, or consequential, relating to or arising out of matters of environmental protection, pollution, health, safety, sanitation, or conservation, including without limitation those relating to the presence, maintenance, or removal of asbestos. Any and all amounts owed by Mortgagor to Mortgagee or Trustee under this paragraph shall constitute additional indebtedness secured by this Mortgage or Trust Deed. Any of the provisions of this Mortgage or Trust Deed to the contrary notwithstanding, the representations, warranties, covenants, agreements, and indemnification obligations contained herein shall survive all indicia of termination of the relationship between Mortgagor and Mortgagee or Trustee including, without limitation, the repayment of all amounts due under the Mortgage or Trust Deed, cancellation of the Note and the release of any and all of the Loan Documents.

This Rider is executed by Albany Bank and Trust Company N.A., not personally, but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Albany Bank and Trust Company N.A., hereby warrants that it possesses full power and authority to execute this instrument) and it is expressly understood and agreed that nothing herein or in said Note contained shall be construed as creating any liability on said Albany Bank and Trust Company N.A., personally to pay the said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by Trustee and by every person now or hereafter claiming any right or security hereunder, and that so far as said Albany Bank and Trust Company N.A., personally is concerned the legal holder or holders of said Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby conveyed for the payment hereof, by the enforcement of the lien hereby created, in the manner herein and in said Note provided or by action to enforce the personal liability of the guarantor, if any or any co-maker of the Note.

IN WITNESS WHEREOF, Albany Bank and Trust Company N.A., not personally but as Trustee as aforesaid, has caused these presents to be signed by its Land Trust Officer, and its corporate seal to be hereunto affixed and attested by its Vice President, the day and year first above written.





Vice President

By signing below, Mortgagor accepts and agrees to the terms and provisions contained in this Rider.
