

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE MAXIMUM AMOUNT OF THE OBLIGATIONS SECURED BY THIS MORTGAGE AT THE TIME OF EXECUTION OR WHICH UNDER ANY CONTINGENCY MAY HEREAFTER BECOME SECURED BY THIS MORTGAGE AT ANY TIME IN THE FUTURE IS \$1,253,920. THIS MORTGAGE SHALL CONTINUE TO SECURE THE ENTIRE OUTSTANDING AMOUNT OF THE OBLIGATIONS UP TO THE MAXIMUM AMOUNT STATED HEREIN UNTIL ALL OF THE OBLIGATIONS HAVE BEEN PAID IN FULL.

This instrument was prepared by  
and after recording return to:

Katten Muchin Rosenman LLP  
525 West Monroe Street  
Chicago, Illinois 60661-3693  
Attn: Barrie Friend, Esq.

  
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**State of Alabama**  
**County of Shelby**



**[CONFORM TO LOCAL RECORDING REQUIREMENTS]**

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

MADE BY

**SCHLOTZKY'S STORES LLC,**  
a Georgia limited liability company

as "**Mortgagor**"

to

**MERRILL LYNCH CAPITAL,** a  
division of Merrill Lynch Business Financial Services Inc.,  
a Delaware corporation

as "**Agent**"



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

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "**Mortgage**") is made as of November 17, 2006, by **SCHLOTZKY'S STORES LLC**, a Georgia limited liability company ("**Mortgagor**"), whose address is 200 Glenridge Point Parkway, Suite 200, Atlanta, Georgia 30342, in favor of **MERRILL LYNCH CAPITAL**, a division of Merrill Lynch Business Financial Services Inc., a Delaware corporation, having an address at 222 N. LaSalle Street, 16th Floor, Chicago, Illinois 60601, in its capacity as agent (in such capacity, together with any of its successors and assigns in such capacity, "**Agent**"), for the benefit of Agent and Lenders (as defined in the Credit Agreement described below).

**RECITALS**

**A.** Lenders have agreed, subject to the terms and conditions of that certain Third Amended and Restated Credit Agreement of even date herewith, by and among Agent, Lenders and Focus Brands Inc., a Delaware corporation ("**Borrower**") (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), to make a revolving loan (the "**Revolving Loan**") and a term loan ("**Term Loan**"; the Revolving Loan and the Term Loan are together referred to as, the "**Loans**") to Borrower. The Loans are evidenced by one or more Third Amended and Substitute Revolving Notes of even date herewith up to the original aggregate principal amount of \$10,000,000.00 made by Borrower (which note(s), together with all notes issued in substitution or exchange therefor and all amendments thereto and restatements thereof, hereinafter are referred to collectively as the "**Revolving Note**") and one or more Third Amended and Substitute Term Note of even date herewith in the original aggregate principal amount of \$100,000,000.00 made by Borrower (which note(s), together with all notes issued in substitution or exchange therefor and all amendments thereto and restatements thereof, hereinafter are referred to collectively as the "**Term Note**"; the Revolving Note and the Term Note hereinafter are referred to together as the "**Note**"). The Note provides for certain payments as set forth therein and in the Credit Agreement with the balances thereof due and payable on or prior to November 16, 2011 (such date, or any later date to which the maturity date may be extended in accordance with the Credit Agreement, hereinafter is referred to as the "**Maturity Date**"). Capitalized terms used herein but not defined herein shall have the respective meanings ascribed to such terms in the Credit Agreement.

**B.** This Mortgage is to secure: (i) the prompt payment of the Note and the obligations under the Credit Agreement, together with all interest, and other amounts, if any, due in accordance with the terms of the Note and the Credit Agreement, as well as the prompt payment of any additional indebtedness of Mortgagor accruing to Agent and/or Lenders on account of any future payments, advances or expenditures, including without limitation, the Future Advances (as hereinafter defined) made by Agent and/or Lenders pursuant to the Note, the Credit Agreement, this Mortgage, the Guaranty (as defined below) or any other Financing Document; (ii) the prompt performance of each and every covenant, condition, and agreement of Mortgagor contained in the Financing Documents; and (iii) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and indebtedness of any kind or nature now or hereafter owing, arising, due or payable from Mortgagor to Agent and/or Lenders in connection with the transactions contemplated by the Financing Documents. All such

obligations, liabilities and indebtedness of every nature of Mortgagor to Agent and/or Lenders are hereinafter sometimes collectively referred to as the "**Obligations**".

**C.** Inasmuch as the Credit Agreement provides for advances to be made in the future ("**Future Advances**"), this Mortgage is given to, and shall, secure not only existing indebtedness, but also the payment of any and all Future Advances, whether such Future Advances are obligatory or are to be made at the option of Lenders, or otherwise, which are to be made within ten (10) years from the date of the execution of this Mortgage. It is expressly understood that this Mortgage is intended to and does secure future advances and all other Obligations, whether now existing or hereafter arising, and any of all extensions, renewals and modifications of same, or any part thereof, at any time before actual cancellation of this instrument on the probate records of the county where the Premises are located. The total amount of indebtedness secured by this Mortgage may decrease or increase from time to time. Mortgagor hereby agrees that, except as set forth herein, it shall not execute or file or record any notice limiting the maximum principal amount that may be so secured, and that no such notice shall be of any force and effect whatsoever unless Agent shall have consented thereto in writing signed by Agent and recorded in the public records of the county in which the Premises (as hereinafter defined) are situated.

**D.** Mortgagor is a direct Subsidiary of the Borrower and, as such, will derive substantial benefit and advantage from the loans and other financial accommodations available to Borrower set forth in the Credit Agreement, and it will be to the Mortgagor's direct interest and economic benefit to assist the Borrower in procuring said loans and other financial accommodations from the Lenders and the Agent.

**E.** To induce the Agent and the other Lenders to enter into the Credit Agreement and make the Loans thereunder, Mortgagor and certain other parties have agreed to guaranty the Obligations pursuant to that certain Amended and Restated Guaranty of even date herewith by Mortgagor and such other parties to Agent (the same, as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the "**Guaranty**") and to pledge and grant a security interest in the Collateral (as defined therein) as security for the Obligations.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE MAXIMUM AMOUNT OF THE OBLIGATIONS SECURED BY THIS MORTGAGE AT THE TIME OF EXECUTION OR WHICH UNDER ANY CONTINGENCY MAY HEREAFTER BECOME SECURED BY THIS MORTGAGE AT ANY TIME IN THE FUTURE IS **[ROARK]**. THIS MORTGAGE SHALL CONTINUE TO SECURE THE ENTIRE OUTSTANDING AMOUNT OF THE OBLIGATIONS UP TO THE MAXIMUM AMOUNT STATED HEREIN UNTIL ALL OF THE OBLIGATIONS HAVE BEEN PAID IN FULL.

NOW THEREFORE, in consideration of the premises and in order to induce Lenders to make the Loans, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby agrees with Agent, for the benefit of Agent and Lenders, as follows:

  
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## 1. Grant and Obligations.

1.1 Grant. For the purpose of securing payment and performance of the Obligations, Mortgagor hereby irrevocably and unconditionally grants, bargains, sells, conveys, mortgages, assigns, pledges, warrants and transfers to Agent, for the benefit of Agent and Lenders, with power of sale and with right of entry and possession, a security interest in and to all of the following property which Mortgagor now has an interest in or hereafter may acquire an interest in (all or any part of such property, or any interest in all or any part of it, as the context may require, the "**Property**"):

(a) The real property described in Exhibit A, together with all existing and future easements and rights affording access to it (the "**Premises**"); together with

(b) All buildings, structures, improvements and fixtures now or in the future located or to be constructed on the Premises (the "**Improvements**"); together with

(c) All existing and future appurtenances, privileges, rights-of-way, franchises and tenements of the Premises, including all minerals rights, oil, gas, and associated substances, and other commercially valuable substances which may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any Premises lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Premises and Improvements; together with

(d) All existing and future Leases, subleases, subtenancies, licenses, occupancy agreements and concessions ("**Leases**") relating to the use and enjoyment of all or any part of the Premises and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of such Leases and all rents, income, revenues, prepayments, security deposits, tax, insurance and replacement reserve deposits, receipts, termination, cancellation, and option payments, royalties, profits, issues, service reimbursements, fees, accounts receivables, and revenues from the Premises and/or Improvements from time to time accruing under the Leases (the "**Rents**"); together with

(e) All materials, supplies, work in process, chattels, furniture, fixtures, appliances, machinery and other personal property of any kind, now or later to be attached to, incorporated into, placed in, on or about, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises and Improvements, whether stored on the Premises or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Mortgage; together with

(f) All claims, demands, judgments, insurance policies, insurance proceeds, refunds, reserves, accounts receivable, cost savings, deposits, rights of action, awards of damages, compensation, settlements and other rights to the payment of money hereafter made resulting from or relating to (i) the taking of the Premises or the Improvements or any part thereof under the power of eminent domain, (ii) any damage (whether caused by such taking, by casualty or otherwise) to the Premises, Improvements or appurtenances

thereto or any part thereof, or (iii) the ownership or operation of the Property; together with

(g) To the extent assignable, all management contracts, permits, licenses, applications, approvals, plans, specifications and drawings, contracts, purchase and sale agreements, purchase options, entitlements, soil test reports, other reports of examination or analysis of the Premises or the Improvements, development rights and authorizations, however characterized, issued or in any way furnished for the acquisition, construction, development, operation and use of the Premises, Improvements and/or Leases, including building permits, environmental certificates, certificates of operation, warranties and guaranties; together with

(h) All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory ("**Books and Records**"); together with

(i) All proceeds and products and renewals of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above; and together with

(j) Any and all after-acquired right, title or interest of Mortgagor in and to any property of the types described in the preceding granting clauses.

The Recitals and Exhibits to this Mortgage are hereby incorporated in this Mortgage.

1.2 Notice. All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Obligations and each other agreement or instrument made or entered into in connection with each of the Obligations. Such terms include any provisions in the Note, the Credit Agreement or the Guaranty which permit borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Obligations may vary from time to time.

## 2. Assignment of Leases and Rents.

2.1 Assignment. Mortgagor hereby irrevocably, absolutely, presently and unconditionally assigns to Agent, for the benefit of Agent and Lenders, all Leases and Rents and other benefits of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits. This is an absolute assignment, not an assignment for security only and shall continue in effect until the Obligations are paid and satisfied in full. Mortgagor hereby gives Agent, for the benefit of Agent and Lenders, the right to collect the Rents and apply them in payment of the principal, interest and all other sums payable under the Financing Documents.

2.2 Grant of License. Agent hereby confers upon Mortgagor a revocable license ("**License**") to enforce the Leases and collect and retain the Rents as they become due and payable so long as no Event of Default, as defined in Section 6.2 below, shall exist and be continuing. If Agent terminates the License as set forth in this Section 2.2, Mortgagor shall deliver such Rents to Agent as are necessary for the payment of principal, interest and other sums payable under the Financing Documents as such sums become due. If an Event of Default has occurred and is continuing, Agent shall have the right, which it may choose to exercise in its sole discretion and which it may exercise without taking possession of the Property, to terminate

this License without notice to or demand upon Mortgagor, and without regard to the adequacy of Agent's and Lenders' security under this Mortgage.

2.3 Collection and Application of Rents. Subject to the License granted to Mortgagor under Section 2.2 above, Agent has the right, power and authority to collect any and all Rents. Mortgagor hereby appoints Agent its attorney-in-fact to perform any and all of the following acts, if and at the times when Agent in its sole discretion may so choose:

- (a) Demand, receive and enforce payment of any and all Rents; or
- (b) Give receipts, releases and satisfactions for any and all Rents; or
- (c) Sue either in the name of Mortgagor or in the name of Agent, for the benefit of Agent and Lenders, for any and all Rents.

Agent and Mortgagor agree that the mere recordation of the assignment granted herein entitles Agent immediately to collect and receive Rents upon the occurrence and during the continuance of an Event of Default, as defined in Section 6.2, without first taking any acts of enforcement under applicable law, such as, but not limited to, providing notice to Mortgagor, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver. Further, Agent's right to receive and collect the Rents does not depend on whether or not Agent takes possession of the Property as permitted under Subsection 6.3(c). Upon the occurrence and during the continuance of an Event of Default Agent may, in its sole discretion, choose to collect Rents either with or without taking possession of the Property. Agent shall apply all Rents collected by it in the manner provided under Section 6.6. If an Event of Default shall have occurred and be continuing while Agent is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Mortgage, Agent and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Mortgage and at law or in equity.

2.4 Agent Not Responsible. Under no circumstances shall Agent have any duty to produce Rents from the Property. Regardless of whether or not Agent, in person or by agent, takes actual possession of the Premises and Improvements, unless Agent agrees in writing to the contrary, Agent is not and shall not be deemed to be:

- (a) A "**mortgagee in possession**" for any purpose; or
- (b) Responsible for performing any of the obligations of the lessor under any lease; or
- (c) Responsible for the control, care, management, or repair of the property or any personal property or for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property;
- (d) Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it; or
- (e) Liable in any way for any injury or damage to any person or property sustained by any person or persons, firm, or corporation in or about the Property.

2.5 Leasing. Mortgagor shall comply with and observe Mortgagor's obligations as landlord under all Leases and shall remain liable under the Leases. Mortgagor shall not, without Agent's prior written consent, which shall not be unreasonably withheld or delayed, execute, modify, amend, surrender or terminate any Lease.

### 3. **Grant of Security Interest**.

3.1 Security Agreement. The parties intend for this Mortgage to create a lien on the Property, and an absolute assignment of the Rents, all in favor of Agent, for the benefit of Agent and Lenders. The parties acknowledge that some of the Property and some or all of the Rents may be determined under applicable law to be personal property or fixtures. To the extent that any Property or Rents may be or be determined to be personal property, Mortgagor, as debtor, hereby grants to Agent, as secured party for the benefit of Agent and Lenders, a security interest in all such Property (including, any replacement or substituted property) and Rents, to secure payment and performance of the Obligations. This Mortgage constitutes a security agreement under the Uniform Commercial Code of the state in which the Property is located, covering all such Property and Rents. Agent shall have all of the rights and remedies of a secured party under the UCC, as well as all other rights and remedies available at law or in equity.

3.2 Financing Statements. Mortgagor hereby authorizes and, to the extent necessary, shall execute one or more financing statements and such other documents as Agent may from time to time require to perfect or continue the perfection of Agent's security interest, for the benefit of Agent and Lenders, in any Property or Rents. As provided in Section 5.7 below, Mortgagor shall pay all fees and costs that Agent may incur in filing this Mortgage (including any extensions, renewals and amendments thereof and reproductions of this Mortgage) and such other documents in public offices and in obtaining such record searches as Agent may reasonably require. In case Mortgagor fails to execute any financing statements or other documents for the perfection or continuation of any security interest granted by this Mortgage or in the event Agent chooses to execute such financing statement on Mortgagor's behalf, Mortgagor hereby authorizes and empowers Agent and irrevocably appoints Agent as Mortgagor's agent and attorney-in-fact to execute and file, on Mortgagor's behalf, all financing statements, refilings, amendments, renewals and continuations thereof as Agent deems necessary or advisable to create, preserve and protect such lien. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Mortgage or the rights or obligations of the parties under it.

### 4. **Fixture Filing**.

This Mortgage constitutes a financing statement filed as a fixture filing under Article 9 of the Uniform Commercial Code in the state in which the Property is located, as amended or recodified from time to time, covering any Property which now is or later may become fixtures attached to the Premises or Improvements. For this purpose, the respective addresses of Mortgagor, as debtor, and Agent, as secured party, for the benefit of Agent and Lenders, are as set forth in the preambles of this Mortgage.

  
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5. **Rights and Duties of the Parties.**

5.1 Representations and Warranties. Mortgagor represents and warrants that:

(a) Mortgagor has the full and unlimited power, right and authority to encumber the Property and assign the Leases and Rents; and

(b) This Mortgage creates a first and prior lien on the Property.

5.2 Performance of Obligations. Mortgagor shall promptly pay and perform each Obligation in accordance with its terms.

5.3 Liens, Charges and Encumbrances. Mortgagor shall immediately discharge any lien on the Property which does not constitute a Permitted Lien, except to the extent the subject of a Permitted Contest in accordance with the provisions of the Credit Agreement.

5.4 Damages and Insurance and Condemnation Proceeds. In the event of any casualty or condemnation of the Property, the provisions of the Credit Agreement shall govern.

5.5 Releases, Extensions, Modifications and Additional Security. From time to time, Agent and/or Required Lenders may perform any of the following acts without affecting the liability of Mortgagor or any other person liable for the payment of the Obligations, and without affecting the lien or charge of the Mortgage as security for the payment of the Obligations, incurring any liability or giving notice to any person:

(a) Release any person liable for payment and performance of any Obligation;

(b) Waive or modify any provision of this Mortgage or the other Financing Documents or grant other indulgences, including, extending the time for payment, or otherwise altering the terms of payment, of any Obligation;

(c) Accept additional real or personal property of any kind as security for any Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;

(d) Alter, substitute or release any property securing the Obligations;

(e) Consent to the making of any plat or map of the Property or any part of it;

(f) Join in granting any easement or creating any restriction affecting the Property;

(g) Join in any subordination or other agreement affecting this Mortgage or the lien of it; or

(h) Release the Property or any part of it.

5.6 Release. When all of the Obligations have been paid and satisfied in full and all fees and other sums owed by Mortgagor under Section 5.7 of this Mortgage and the other Financing Documents have been received, Agent shall release this Mortgage, the lien created

thereby, and all notes and instruments evidencing the Obligations. Mortgagor shall pay any costs of preparation and recordation of such release.

  
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5.7 Compensation, Exculpation, Indemnification.

(a) Mortgagor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Agent and/or Lenders when the law provides no maximum limit, for any services that Agent and/or Lenders may render in connection with this Mortgage, including Agent's providing a statement of the Obligations or providing the release pursuant to Section 5.6 above. Mortgagor shall also pay or reimburse all of Agent's reasonable costs and expenses which may be incurred in rendering any such services. Mortgagor further agrees to pay or reimburse Agent and/or Lenders for all costs, expenses and other advances which may be incurred or made by any such Person in any efforts to enforce any terms of this Mortgage or to protect the rights under this Mortgage or the other Financing Documents, including any rights or remedies afforded to Agent and/or Required Lenders under Section 6.3, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Mortgage, including reasonable attorneys' fees and other legal costs, costs of any Foreclosure Sale (as defined in Subsection 6.3(i) below) and any cost of evidence of title. If Agent chooses to dispose of Property through more than one Foreclosure Sale, Mortgagor shall pay all costs, expenses or other advances that may be incurred or made by Agent in each of such Foreclosure Sales.

(b) Neither Agent nor any Lender shall be directly or indirectly liable to Mortgagor or any other person as a consequence of any of the following:

(i) Agent's exercise of or failure to exercise any rights, remedies or powers granted to Agent in this Mortgage;

(ii) Agent's failure or refusal to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Mortgage; or

(iii) Any loss sustained by Mortgagor or any third party resulting from Agent's failure to lease the Property, or from any other act or omission of Agent in managing the Property, after an Event of Default, unless and to the extent the loss is caused by the willful misconduct and bad faith of Agent.

Mortgagor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Agent or any Lender.

(c) Mortgagor agrees to indemnify, defend and hold Agent and Lenders harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which it may suffer or incur:

(i) In performing any act required or permitted by this Mortgage or any of the other Financing Documents or by law;

(ii) Because of any failure of Mortgagor to perform any of its obligations; or

(iii) Because of any alleged obligation of or undertaking by Agent and/or Lenders to perform or discharge any of the representations, warranties, conditions, covenants or other obligations in any document relating to the Property other than the Financing Documents.

This agreement by Mortgagor to indemnify Agent and Lenders shall survive the release and cancellation of any or all of the Obligations and the full or partial release of this Mortgage.

(d) Mortgagor shall pay all obligations to pay money arising under this Section 5.7 immediately upon demand by Agent. Each such obligation shall be added to, and considered to be part of, the Obligations, and shall bear interest from the date the obligation arises at the default rate specified in Section 8.4 of the Credit Agreement (the "**Default Rate**").

5.8 Defense and Notice of Claims and Actions. At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Mortgage and the rights and powers of Agent created under it, against all adverse claims. Mortgagor shall give Agent prompt notice in writing if any claim is asserted which does or could affect any such matters, or if any action or proceeding is commenced which alleges or relates to any such claim. Agent may, at the expense of Mortgagor, appear in and defend any such claim, action or proceeding and any claim, action or other proceeding asserted or brought against Agent in connection with or relating to any part of the Property or this Mortgage.

5.9 Subrogation. Agent shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Agent in accordance with this Mortgage or with the proceeds of any loan secured by this Mortgage.

## 6. **Default and Remedies.**

6.1 Reserved.

6.2 Events of Default. The occurrence of an Event of Default under the Credit Agreement or any other Financing Document shall constitute an "Event of Default" under this Mortgage.

6.3 Remedies. At any time after an Event of Default has occurred and is continuing, Agent and/or Required Lenders shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Agent at law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Acceleration. Agent and/or Required Lenders may declare any or all of the Obligations to be due and payable immediately.



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(b) Receiver. Agent shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through Mortgagor, and without regard for the solvency or insolvency of Mortgagor or the then value of the Property, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Property and the Rents, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers 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. Such receiver shall have all powers and duties prescribed by applicable law, all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Agent would have, upon entering and taking possession of the Property under subsection (c) below.

(c) Entry. Agent, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, may exclude Mortgagor and its agents and employees wholly therefrom, and may also do any and all other things in connection with those actions that Agent may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: taking and possessing all of Mortgagor's or the then owner's Books and Records and accounts; entering into, enforcing, modifying or canceling leases on such terms and conditions as Agent may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Agent; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Agent so requests, Mortgagor shall assemble all of the Property that has been removed from the Premises and make all of it available to Agent at the site of the Premises. Mortgagor hereby irrevocably constitutes and appoints Agent as Mortgagor's attorney-in-fact to perform such acts and execute such documents as Agent in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Mortgagor's name on any instruments. If Mortgagor shall for any reason fail to surrender or deliver the Property or any part thereof after such demand by Agent, Agent or such receiver may obtain a judgment or decree conferring on Agent or such receiver, the right to immediate possession of the Property or requiring the delivery of the Property to Agent or such receiver, and Mortgagor specifically consents to the entry of such judgment or decree.

(d) Cure; Protection of Security. Agent may cure any breach or default of Mortgagor, and if it chooses to do so in connection with any such cure or with respect to preventing a loss to Agent's interest in the Property, Agent may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and reasonably appropriate to protect the security of this Mortgage. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Agent under, this Mortgage; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien against the Property; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Credit Agreement; repairing, restoring or otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Agent. Agent may take any of the actions permitted under this Subsection 6.3(d) either with or without giving notice to any person. Any amounts disbursed by Agent under this Subsection

6.3(d) together with interest thereon at the Default Rate from the date of disbursement, shall be secured by this Mortgage and shall be due and payable on demand. Nothing contained in the Financing Documents shall require Agent or Lenders to incur any expense or take any action hereunder.

(e) Uniform Commercial Code Remedies. Agent may exercise any or all of the remedies granted to a secured party under the Uniform Commercial Code in the state in which the Property is located.

(f) Foreclosure; Lawsuits. Upon the occurrence and during the continuance of an Event of Default, (a) the entire balance of the Note and any other Obligations due, including all accrued interest, shall, at the option of the Agent, in accordance with the terms of the Credit Agreement, become immediately due and payable; and (b) Upon failure to pay the Obligations or reimburse any other amounts due under the Credit Agreement in full at any stated or accelerated maturity and in addition to all other remedies available to Agent at law or in equity, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in the case of past due mortgages, and the Agent shall be authorized, at its option, whether or not possession of the Property is taken, after giving notice by publication once a week for three (3) consecutive weeks of the time, place and terms of each such sale by publication in a newspaper published in the county or counties wherein the Property or any part thereof is located, to sell the Property (or such part or parts thereof as the agent may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. The Agent, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. Agent may credit bid at any such sale an amount up to and including the full amount of the Obligations, including without limitation, accrued and unpaid interest, principal, charges, and advances made hereunder. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Property, real, personal or mixed, may be offered for sale in parcel or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any portion of such proceeds, the Mortgagor hereby waiving the application or any doctrine of marshaling or like proceeding. In case the Agent, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein may not be fully exercised until all of the Property not previously sold shall have been sold or all the Obligations shall have been paid in full. The Mortgagor hereby waives, to the extent permitted by law, any statutory right of redemption in connection with such foreclosure proceedings. Upon such foreclosure, Agent is authorized and empowered to execute and deliver to the Purchaser a deed to the property sold in the name and on behalf of the Mortgagor. Agent may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale. Without limiting the foregoing, Agent may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the

judgment or decree of any court of competent jurisdiction. Notwithstanding any statute or rule of law to the contrary, the failure to join any tenant or tenants of the Property as party defendant or defendants in any foreclosure action or the failure of any such order or judgment to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect (i) the Obligations, or any part thereof or (ii) any deficiency remaining unpaid after foreclosure and sale of the Property. To the extent a notice of sale shall be required by law for the sale or disposition of the Personal Property, a reasonable authenticated notification of disposition shall be notification given at least ten (10) days' prior to any such sale, provided however, that no notification need be given to Mortgagor if it has authenticated after default a statement renouncing or modifying any right to notification of sale or other intended disposition.

(g) Other Remedies. Agent may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Mortgagor or any other person or entity in favor of Agent in connection with the Obligations or any part thereof, without prejudice to the right of Agent thereafter to enforce any appropriate remedy against Mortgagor. Agent shall have the right to pursue all remedies afforded to a mortgagee under applicable law, and shall have the benefit of all of the provisions of such applicable law, including all amendments thereto which may become effective from time to time after the date hereof.

(h) Sale of Personal Property. Agent shall have the discretionary right to cause some or all of the Property, which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(i) For purposes of this power of sale, Agent may elect to treat as personal property any Property which is intangible or which can be severed from the Premises or Improvements without causing structural damage. If it chooses to do so, Agent may dispose of any personal property, in any manner permitted by Article 9 of the Uniform Commercial Code of the state in which the Property is located, including any public or private sale, or in any manner permitted by any other applicable law.

(ii) In connection with any sale or other disposition of such Property, Mortgagor agrees that the following procedures constitute a commercially reasonable sale: Agent shall mail written notice of the sale to Mortgagor not later than fifteen (15) days prior to such sale. Agent will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Agent will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding the foregoing, Agent shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(i) Single or Multiple Foreclosure Sales. If the Property consists of more than one lot, parcel or item of property, Agent may:

(i) Designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(ii) Elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Agent may deem to be in its best interests (any such sale or disposition, a "**Foreclosure Sale**"; and any two or more, "**Foreclosure Sales**").

If Agent chooses to have more than one Foreclosure Sale, Agent at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Agent may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Mortgage on any part of the Property which has not been sold, until all of the Obligations have been paid in full.

Agent and any receiver, or any of their agents or representatives, shall have no liability for any loss, damage, injury, cost or expenses resulting from any action or omission that was taken or omitted in good faith.

It is specifically covenanted and agreed that Agent may proceed, at the same or different times, to foreclose this Mortgage or any of the other security documents as shall have been executed and delivered in connection with the extension of the Loans (the "Other Security Documents") or resort to any of their remedies thereunder, by any proceedings appropriate in the state where any of the Property lies, and that no enforcement taking place in any state, including, without limiting the generality of the foregoing, any pending foreclosure, judgment or decree of foreclosure, foreclosure sale, rents received, possession taken, deficiency judgment or decrees, or judgment taken on any of the Notes or other Financing Documents, shall in any way stay, preclude or bar enforcement of this Mortgage or any of the Other Security Documents or any of them in any other state, and that Agent may pursue any or all of its remedies to the maximum extent permitted by state laws until all Obligations have been paid or discharged in full.

6.4 Credit Bids. At any Foreclosure Sale, any person, including Mortgagor or Agent, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Agent may settle for the purchase price by crediting the sales price of the property against the following obligations:

(a) First, the portion of the Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to pay or reimburse Agent under Section 5.7 of this Mortgage; and

(b) Second, all other Obligations in any order and proportions as Agent in its sole discretion may choose.

6.5 Application of Foreclosure Sale Proceeds. Agent shall apply the proceeds of any Foreclosure Sale in the following manner:

(a) First, to pay the portion of the Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to reimburse Agent under Section 5.7 of this Mortgage;

(b) Second, to pay the portion of the Obligations attributable to any sums expended or advanced by Agent under the terms of this Mortgage which then remain unpaid;

(c) Third, to pay all other Obligations in any order and proportions as Agent in its sole discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it.

6.6 Application of Rents and Other Sums. Agent shall apply any and all Rents collected by it, and any and all sums other than proceeds of a Foreclosure Sale which Agent may receive or collect under Section 6.3 above, in the following manner:

(a) First, to pay the portion of the Obligations attributable to the costs and expenses of operation and collection that may be incurred by Agent or any receiver;

(b) Second, to pay all other Obligations in any order and proportions as Agent in its sole discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Agent shall have no liability for any funds which it does not actually receive. To the extent permitted by applicable law, Mortgagor waives all claims, damages and demands against Agent arising out of the disposition, repossession or retention of the Property.

## 7. Miscellaneous Provisions.

7.1 Additional Provisions. The Financing Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Mortgage. The Financing Documents also grant further rights to Agent, for the benefit of Agent and Lenders, and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property.

7.2 No Waiver or Cure. If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default or notice of default under this Mortgage or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Obligations then due have been paid and performed and all other defaults under the Financing Documents have been cured); or impair the security of this Mortgage; or prejudice Agent or any receiver in the exercise of any other right or remedy afforded any of them under this Mortgage; or be construed as an affirmation by Agent of any tenancy, lease or option, or a subordination of the lien of this Mortgage.

(a) Agent, its agent or a receiver takes possession of all or any part of the Property in the manner provided in Subsection 6.3(c).

(b) Agent collects and applies Rents as permitted under Sections 2.3 and 6.6 above, either with or without taking possession of all or any part of the Property.

  
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Shelby Cnty Judge of Probate, AL  
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(c) Agent receives and applies to any Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Agent under Section 5.4 above.

(d) Agent makes a site visit, observes the Property and/or conducts tests as permitted under the Credit Agreement.

(e) Agent receives any sums under this Mortgage or any proceeds of any collateral held for any of the Obligations, and applies them to one or more Obligations.

(f) Agent or any receiver invokes any right or remedy provided under this Mortgage.

### 7.3 Powers of Agent.

(a) If Agent performs any act which it is empowered or authorized to perform under this Mortgage, including any act permitted by Section 5.5 or Subsection 6.3(d) of this Mortgage, that act alone shall not release or change the personal liability of any person for the payment and performance of the Obligations then outstanding, or the lien of this Mortgage on all or the remainder of the Property for full payment and performance of all outstanding Obligations. The liability of the original Mortgagor shall not be released or changed if Agent grants any successor in interest to Mortgagor any extension of time for payment, or modification of the terms of payment, of any Obligation. Agent shall not be required to comply with any demand by the original Mortgagor that Agent refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(b) Agent may take any of the actions permitted under Subsections 6.3(b) and/or 6.3(c) regardless of the adequacy of the security for the Obligations, or whether any or all of the Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Mortgage.

(c) From time to time, Agent may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this Mortgage. Agent may from time to time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

7.4 Merger. No merger shall occur as a result of Agent's acquiring any other estate in or any other lien on the Property unless Agent consents to a merger in writing.

7.5 Joint and Several Liability. If Mortgagor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Mortgagor's obligations under this Mortgage and the other Financing Documents.

7.6 Applicable Law. The creation, perfection and enforcement of the lien of this Mortgage shall be governed by the law of the state in which the Property is located. Subject to the foregoing, in all other respects, this Mortgage shall be governed by the substantive laws of the state of Illinois.

7.7 Waiver of Homestead and Redemption. Mortgagor hereby waives all right of homestead exemption in the Property. Mortgagor hereby waives all right of redemption on behalf of Mortgagor and on behalf of all other persons acquiring any interest or title in the Property subsequent to the date of this Mortgage, except decree or judgment creditors of Mortgagor.

7.8 Waiver of Statutory Rights. To the extent permitted by law, Mortgagor hereby agrees that it shall not and will not apply for or avail itself of any appraisement, 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 Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Mortgagor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Mortgage on behalf of Mortgagor and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Mortgage. The foregoing waiver of right of redemption is made pursuant to the provisions of applicable law.

7.9 Severability. If any provision of this Mortgage should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then Agent may, at its option, declare all Obligations immediately due and payable.

7.10 Notice. Notices shall be given under this Mortgage in conformity with the terms and conditions of the Guaranty and in conformity with applicable law.

7.11 Reserved.

7.12 WAIVER OF TRIAL BY JURY. MORTGAGOR AND AGENT (BY ITS ACCEPTANCE HEREOF) EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY CLAIM, CONTROVERSY, DISPUTE, ACTION OR PROCEEDING ARISING OUT OF OR RELATED TO THIS MORTGAGE AND THE OTHER FINANCING DOCUMENTS (INCLUDING WITHOUT LIMITATION ANY ACTIONS OR PROCEEDINGS FOR ENFORCEMENT OF THE FINANCING DOCUMENTS) AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. MORTGAGOR AND AGENT ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH OF THEM HAVE RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS AND THAT EACH OF THEM WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. MORTGAGOR AND AGENT WARRANT AND REPRESENT THAT EACH HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

7.13 Inconsistencies. In the event of any inconsistency between this Mortgage and the Credit Agreement, the terms hereof shall be controlling as necessary to create, preserve and/or maintain a valid security interest upon the Property, otherwise the provisions of the Credit

Agreement shall be controlling. The terms of the Credit Agreement are hereby incorporated herein and expressly made a part hereof by this reference.

7.14 Further Assurances. Mortgagor agrees to execute any further documents, and to take any further actions reasonably requested by Agent to evidence or perfect the security interests granted herein, to maintain the first priority of the security interests, and to effectuate the rights granted to Agent, for the benefit of Agent and Lenders, hereunder.

**[Remainder of Page Intentionally Left Blank; Signature Page Follows]**

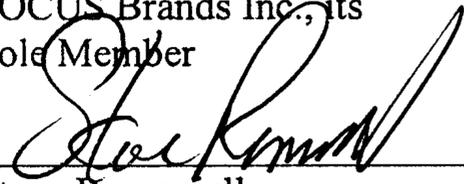
  
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IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first above written under seal.

**MORTGAGOR:**

**SCHLOTZSKY'S STORES LLC**, a Georgia limited liability company

By: FOCUS Brands Inc., its  
Sole Member

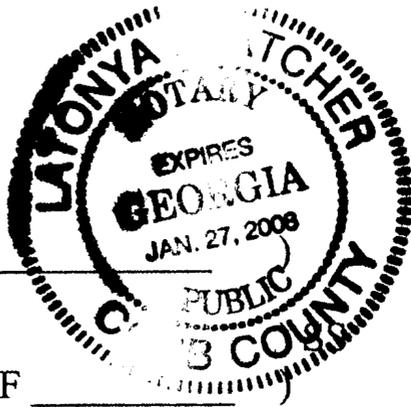
By:   
Name: Steve Romaniello  
Title: Chief Executive Officer

Corporate Seal of Mortgagor:

  
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STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_



I, the undersigned notary public, in and for said County in and for said State, hereby certify that Steve Romanelli whose name as C.E.O. of Schlotzsky's Stores LLC, a Georgia limited liability company (the "Company"), is signed to the foregoing Mortgage and who is known to me, acknowledged before me on this day that, being informed of the contents of said Mortgage (s)he, as the C.E.O. of the Company and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal this 10TH day of November, 2006.

Latonya Quatman  
 NOTARY PUBLIC  
 My Commission Expires: 01/27/2008

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 Shelby Cnty Judge of Probate, AL  
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**EXHIBIT A**

Out Parcel "B", according to the Final Plat of Inveness Corners/Out Parcel "B", as recorded in Map Book 21, Page 30, in the Probate Office of Shelby County, Alabama.

Together with easement rights as set out in instrument recorded as Instrument No. 1997-05888, in the Probate Office of Shelby County, Alabama.



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