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Cook County Recorder 57.50



Property of Cook County Clerk's Office

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

THIS INDENTURE ("Mortgage") is made March 15, 2000 by and between MAC Realty of Skokie, Inc., an Illinois corporation ("Mortgagor"), and American Chartered Bank ("Mortgagee").

WITNESSETH:

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WHEREAS, Mortgagee lent to Mortgagor the principal sum of EIGHT HUNDRED SIXTY THOUSAND DOLLARS (\$860,000.00) (the "Loan"), which Loan is evidenced by that certain Term Note of Mortgagor dated of even date herewith, made payable to the order of Mortgagee (the "Note") and delivered to Mortgagee, in and by which said Note Mortgagor promises to pay the said principal sum and interest at the rate and at the time provided in the Note, and all of said principal and interest are made payable at such place as the holder of the Note may, from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee, at 1199 East Higgins Road, Schaumburg, Illinois 60173, Attn: Loan Servicing Department.

**THIS MORTGAGE WAS PREPARED BY  
AND AFTER RECORDING RETURN TO:**

**ADDRESSES AND P.I.N.:**

Douglas Conover, Esq.  
Rieck and Crotty, P.C.  
55 West Monroe Street, Suite 3390  
Chicago, Illinois 60603

5950 West Howard Street  
Skokie, Illinois 60077  
PIN: 10-29-209-032



NOW, THEREFORE, Mortgagor, to secure the payment of the principal sum of money and interest evidenced by the Note in accordance with the terms, provisions and limitations of this Mortgage, and any other sums advanced by Mortgagee to protect the security of this Mortgage or discharge the obligations of Mortgagor hereunder and under the Loan and Security Agreement between Mortgagor and Mortgagee (the "Loan Agreement") (such principal and interest and all other sums being herein collectively referred to the "Indebtedness") and the performance of the covenants and agreements herein contained by Mortgagor to be performed, and also in consideration of the sum of One Dollar (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents MORTGAGE, GRANT, CONVEY and RELEASE unto Mortgagee, its successors and assigns, the following described real estate and all of its estate, right, title and interest therein, situated in Cook County, Illinois, to-wit:

THE LEGAL DESCRIPTION OF THE REAL ESTATE MORTGAGED HEREBY  
IS ATTACHED HERETO AS EXHIBIT A AND MADE A PART HEREOF

which, with the property hereinafter described, is collectively referred to herein as the "Property."

TOGETHER with all improvements, tenements, easements, hereditaments and appurtenances thereunto belonging, and all rents, issues and profits thereof for so long as and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with the Real Estate and not secondarily), the structures or buildings, additions and improvements, and replacements thereof now or hereafter erected upon the Property, and all fixtures, equipment attached thereto or located thereon or therein that are used in connection with the Property or improvements.

All capitalized terms not otherwise defined herein shall have the same meaning ascribed to such term in the Loan Agreement.

TO HAVE AND TO HOLD the Property unto Mortgagee, and its successors and assigns, forever, for the purposes and uses herein set forth.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.** Mortgagor shall: (A) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Property which may become damaged or be destroyed (except as provided in Section 4); (B) keep the Property in good condition and repair without waste, and free from mechanics' liens or claims for lien not expressly subordinated to the lien hereof; or insured over; (C) pay when due or insured over any indebtedness which may be secured by a lien or charge on the Property superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee; (D) comply with all requirements of law, municipal ordinances, or restrictions of record with respect to the Property and the use thereof; (E) make no material alterations in the Property (other than tenant improvements) except as permitted by the Ancillary Agreements or as required by law or municipal ordinance, without Mortgagee's written consent, which consent shall not be unreasonably withheld; (F) suffer or permit no change in the general nature of the occupancy of the Property, that would cause a violation of any applicable zoning

ordinance; and (G) pay each item of Indebtedness when due according to the terms hereof or of the Note.

2. **Insurance.** Mortgagor shall keep all buildings and improvements now or hereafter situated on the Property insured against loss or damage by fire and extended coverage, malicious mischief and vandalism and such other hazards in such amounts as may reasonably be required by Mortgagee, but in any case for the full insurable value thereof. Mortgagor shall also provide liability insurance with such limits for personal injury and death and property damage as Mortgagee may reasonably require. All policies of insurance to be furnished hereunder shall be in forms, with companies, and in amounts all as may be reasonably required by Mortgagee, with mortgagee loss payable clauses attached to all policies in favor of and in form reasonably satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without ten (10) days' prior written notice to Mortgagee. Mortgagor shall deliver a certificate of insurance or the original of all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration. If any renewal policy is not delivered to Mortgagee thirty (30) days before the expiration of any existing policy or policies, with evidence of premium paid, Mortgagee may, but is not obligated to obtain, the required insurance on behalf of Mortgagor (or insurance in favor of Mortgagee alone) and pay the premiums thereon. Any monies so advanced shall be so much additional Indebtedness and shall become immediately due and payable with interest thereon at the same rate as provided in the Note.

3. **Adjustment of Losses with Insurer and Application of Proceeds of Insurance.** In case of loss, Mortgagee (or after entry of decree of foreclosure, purchaser at the sale, or the decree creditor, as the case may be) is hereby authorized to agree with the insurance company or companies on the amount to be paid upon the loss. Mortgagee is authorized to collect and receipt for any such insurance money. Provided that: (A) an Event of Default has not occurred under the Note and Mortgagor is not in default of any of its obligations hereunder; and (B) Mortgagor's financial condition has not materially and adversely changed, such insurance proceeds shall be held by Mortgagee and used to reimburse Mortgagor for the cost of the rebuilding or restoration of the buildings or improvements on the Property. If the conditions set forth above for use of insurance proceeds for restoration or rebuilding are not met, Mortgagee will apply the proceeds to the Indebtedness in the order provided in Section 11 hereof. The buildings and improvements shall be so restored or rebuilt as to be of at least of equal value and substantially the same character as prior to such damage or destruction. In the event Mortgagor is entitled to reimbursement out of insurance proceeds, such proceeds shall be made available, from time to time, promptly upon Mortgagee being furnished with satisfactory evidence of the estimated cost of completion thereof and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments, including, at the option of Mortgagee, insurance against mechanic's liens and/or a performance bond or bonds in form satisfactory to Mortgagee, with premium fully prepaid, under the terms of which Mortgagee shall be the sole or a dual obligor, and which shall be written with such surety company or companies as may be satisfactory to Mortgagee, as Mortgagee may reasonably require and approve, and, if the estimated cost of the work exceeds twenty percent (20%) of the original principal amount of the Indebtedness, with all plans and specifications for such rebuilding or restoration as Mortgagee may reasonably require and which shall be subject to

approval by Mortgagee. No payment made prior to the final completion of the work shall exceed ninety (90%) percent of the value of the work performed, from time to time, and at all times the undistributed balance of said proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. If, after completion of the work, there are funds remaining, said funds shall be either: (A) applied to the unpaid balance of the Indebtedness; or (B) paid to Mortgagor, at the option of Mortgagee in its sole discretion. In case of loss after foreclosure proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied as aforesaid in rebuilding or restoring the building or improvements, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid to the owner of the equity of redemption if he shall then be entitled to the same, or as the court may direct. In case of the foreclosure of this Mortgage, the court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said decree creditor; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statute in such case made and provided, then and in every such case, each successive redeemer may cause the preceding loss clause attached to each insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale or to take such other steps as Mortgagee may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

4. **Prepayment Privilege.** Mortgagor shall have the privilege of making prepayments on the principal of said Note (in addition to any required payments) in accordance with the terms and conditions set forth in the Note.

5. **Effect of Extensions of Time.** (A) If the payment of Indebtedness or any part thereof is extended or varied or if any part of the security is released, all entities now or at any time hereafter liable therefor, or interested in the Property, shall be held to and the lien and all provisions hereof shall continue in full force, the right of recourse against all such entities being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

(B) No sale of the Property or any part thereof, no forbearance on the part of Mortgagee, and no extension of the time for the payment of the Indebtedness, given by Mortgagee, shall operate to release, modify, change, or affect the original liability of Mortgagor either in whole or in part.

(C) Mortgagee, at its sole option and without notice, may release any part of the Property, or any person liable for the Indebtedness, without in any way affecting the lien hereof upon any part of the Property not expressly released, and may agree with any party obligated on the Indebtedness, or having any interest in the Property, to extend the time for payment of any part or all of the Indebtedness. Such agreement shall not in any way release or impair the lien hereof, but shall extend the lien hereof as against the title of all parties having any interest in the Property which interest is subject to this Mortgage.

6. **Effect of Changes in Laws Regarding Taxation.** In the event of the enactment after this date of any law of the state of Illinois deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Property, so as to affect this Mortgage or the Indebtedness or the holder thereof, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee: (A) it might be unlawful to require Mortgagor to make such payment; or (B) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event (but after the expiration of all applicable appeal periods during which Mortgagor may have to appeal any such law), Mortgagee may elect, by written notice to Mortgagor, to declare all of the Indebtedness to be and become due and payable sixty (60) days from the giving of such notice.

7. **Mortgagee's Performance of Defaulted Acts.** After an Event of Default, Mortgagee may, but shall not be obligated to, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Property or contest any tax or assessment. All monies paid for any of the purposes herein authorized and all reasonable expenses paid or incurred in connection therewith, including attorney's fees, and any other monies advanced by Mortgagee to protect the Property and the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable without notice and with interest thereon at the rate stated in the Note. Mortgagee's exercise of its rights hereunder shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

8. **Mortgagee's Reliance on Tax Bills, etc.** Mortgagee, in making any payment hereby authorized: (A) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (B) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

9. **Default; Rights and Remedies on Default.**

(A) **Event of Default.** The occurrence of any one or more of the following events shall constitute an Event of Default:

1. Mortgagor fails, within five (5) days after Mortgagee gives Mortgagor notice of any delinquent payment, to pay any amount due hereunder or under the Note, whether by acceleration or otherwise, the principal (or any part(s) thereof including any required prepayment) of the Note, or any installment of interest on the Note or any other sum due and payable under this Mortgage, the Loan Agreement, or any of the Ancillary Agreements;

2. Mortgagor or any Guarantor of the Indebtedness fails or neglects to perform, keep, or observe any other term, provision, condition or covenant contained in this Mortgage, the Loan Agreement, or in the Ancillary Agreements or any other agreements between Mortgagee and Mortgagor or any Guarantor, which Mortgagor or guarantor is required to perform, keep or observe and the same is not cured to Mortgagee's satisfaction within thirty (30) days after Mortgagee gives Mortgagor notice identifying such Default;

3. A default shall occur under any agreement, document or instrument, other than this Mortgage, the Loan Agreement, or any of the Ancillary Agreements, now or hereafter existing, to which Mortgagor is a party, if such default has a material effect upon the operation of Mortgagor's business or a material effect upon any of the covenants, representations or warranties contained in this Mortgage, the Loan Agreement, or the Ancillary Agreements;

4. The Collateral or the Property, or any part thereof, is damaged or destroyed by fire or other casualty and in the reasonable judgment of Mortgagee the loss is not adequately covered by insurance actually collected or in the process of collection, and if Mortgagor fails to deposit or to cause to be deposited with Mortgagee the deficiency within thirty (30) days after Mortgagee's written request therefor;

5. The Collateral or any of Mortgagor's other assets are attached, seized, levied upon or subjected to a writ or distress warrant, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors an application is made by any Person other than Mortgagor for the appointment of a receiver, trustee, or custodian for the Collateral, or any of Mortgagor's other assets; Mortgagor ceases to conduct business as now conducted or is enjoined, restrained or in any way prevented by court order from conducting all or any material part of Mortgagor's business affairs; or a petition under any paragraph or chapter of the Bankruptcy Code or any similar law or regulation is filed by or against Mortgagor or any guarantor of the Indebtedness and the same is not dismissed within thirty (30) days after the application therefor;

6. A notice of lien, levy or assessment is filed of record with respect to all or any substantial portion of Mortgagor's assets by the United States, or any department, agency or instrumentality thereof, or by any state, county, municipal or other governmental agency, or any taxes or debts owing to any of the foregoing becomes a lien or encumbrance upon the Collateral and such lien or encumbrance is not released within thirty (30) days after its creation;

7. Mortgagor becomes insolvent or fails generally to pay Mortgagor's debts as they become due;

8. Any guaranty of the Loan is repudiated, becomes unenforceable, or any Guarantor becomes incapable of performance of such guaranty;

9. Any statement, representation, warranty, report, financial statement, or certification, made or delivered by Mortgagor, or any of Mortgagor's officers, employees or agents, or by any Guarantor to Mortgagee in or pursuant to this Mortgage, the Loan Agreement, or any of the Ancillary Agreements proves to be untrue in any material and adverse respect at any time when such representation, warranty or certification is operative or applicable hereunder; and in such case such representation and warranty continues to be untrue ten (10) days after notice from Mortgagee to Mortgagor or such other persons, as the case may be;

10. Mortgagor is unable to satisfy any condition to Mortgagor's right to the receipt of a Loan disbursement hereunder (subsequent to the first such disbursement) for a period in excess of thirty (30) days after written demand therefor by Mortgagee; or

11. There is any material adverse change in the condition or business (financial or otherwise) of Mortgagor or any guarantor that, in the reasonable opinion of Mortgagee, materially impairs Mortgagee's security or materially increases Mortgagee's risk relative to the risks inherent at the date hereof.

Any Event of Default which may occur under this Mortgage shall constitute an Event of Default under the Loan Agreement.

With respect to any non-monetary Event of Default that is not cured within the applicable cure period, or within thirty (30) days if no cure period is otherwise specified, Mortgagee will delay the exercise of its rights and remedies hereunder provided: (1) Mortgagor commences the cure of such Event of Default within the applicable cure period; (2) thereafter Mortgagor pursues the cure of such Event of Default with all reasonable diligence; and (3) Mortgagee's interests are not materially and adversely affected by Mortgagor's failure to cure.

(B) **Default under Ancillary Agreement.** Any Default which occur under this Agreement shall constitute a default under the Ancillary Agreements.

(C) **Delay of Exercise of Remedies.** With respect to any non-monetary default that is not cured within the applicable cure period, or within thirty (30) days if no cure period is otherwise specified, Lender will delay the exercise of its rights and remedies hereunder provided: (a) Mortgagor commences the cure of such Default within the applicable cure period; (b) thereafter Mortgagor diligently pursues the cure of such Default with all reasonable diligence; and (c) Lender's interests are not materially and adversely affected by Mortgagor's failure to cure.

(D) **Remedies.** After the occurrence of any Event of Default which has not been cured within the applicable grace or cure periods, Mortgagor shall be deemed to be in Default hereunder. After the occurrence of a Default, in addition to all the rights and remedies conferred upon Mortgagee by law or equity or by the terms of any of the Ancillary Agreements, Mortgagee shall have the right to do any or all of the following, concurrently or successively, without further notice to Mortgagor:

1. Declare the Note immediately due and payable, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Ancillary Agreements to the contrary notwithstanding;

2. Terminate Mortgagee's obligations under this Mortgage to extend credit of any kind or to make any disbursement, whereupon the commitment and obligations of Mortgagee to extend credit or to make disbursements hereunder shall terminate; and

3. Pursue any and all of rights and remedies of a secured party under the Code or other applicable law, all of which rights and remedies shall be cumulative, and none exclusive, to the extent permitted by law, in addition to any other rights and remedies contained in this Mortgage, the Loan Agreement, and in all of the Ancillary Agreements. Mortgagee waives all demands, notices, and advertisement of any kind (except the notice of time and place of public or private sale) to or upon Mortgagor or any other person. Mortgagee shall have the right, upon any such sale or sales, public or private, to purchase the whole or any part of the Collateral, free of any right or equity of redemption in Mortgagor, which right or equity is hereby expressly waived or released. Mortgagee shall apply the net proceeds of any such collection or sale, after deducting all reasonable costs and expenses of every kind incurred therein or incidental to the safekeeping or otherwise of any and all of the Collateral in any way relating to the rights of Mortgagee hereunder, including reasonable attorneys' fees and legal expenses, to the payment, in whole or in part, of the Note in such order as Mortgagee may elect and Mortgagor shall remain liable for any deficiency remaining unpaid after such application, and only after so paying over such net proceeds and after the payment by Mortgagee of any other amount required by any provision of law, including, without limitation, Section 9-504(1)(c) of the Code. Mortgagee shall account for the surplus, if any, to Mortgagor. Mortgagor agrees that Mortgagee need not give more than thirty (30) days' notice of the time and place of any public sale or of the time after which a private sale or other intended disposition is to take place and that such notice is reasonable notification of such matters.

11. **Foreclosure; Expense of Litigation.** When the Indebtedness, or any part thereof, shall become due and shall remain unpaid after the expiration of all applicable cure or grace periods, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof, and in the event of the default in the payment of any amount due under the Note and expiration of all applicable cure or grace periods, the owner of the Note may accelerate the payment of same and may institute proceedings to foreclose this Mortgage for the entire amount then unpaid with respect to the Note. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all reasonable expenditures and reasonable expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such title searches and examinations, title insurance policies, and similar information and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Property. All and such



expenses and fees as may be incurred in the protection of the Property and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the applicable rate as stated in the Note and shall be secured by this Mortgage.

Mortgagee may employ counsel for advice or other legal service at Mortgagee's reasonable discretion in connection with any dispute as to the obligations of Mortgagor hereunder, or as to the title of Mortgagee to the Property pursuant to this Mortgage, or in any litigation to which Mortgagee may be a party which may affect the title to the Property or the validity of the Indebtedness, and any reasonable attorneys' fees so incurred shall be added to and be a part of the Indebtedness. If Mortgagee prevails in any such dispute or litigation, any costs and expenses reasonably incurred in connection with any dispute or litigation affecting the Indebtedness or Mortgagee's title to the Property, including reasonably estimated amounts to conclude the transaction, shall be added to and be a part of the Indebtedness. All such amounts shall be payable by Mortgagor to Mortgagee within ten (10) days after demand, and if not paid, shall be included as a part of the Indebtedness and shall include interest at the rate stated in the Note from the dates of their respective expenditures. If Mortgagee does not prevail in such dispute or litigation, Mortgagee may not add its costs and expenses to the Indebtedness.

12. **Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Property shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding Section hereof; second, to all other items which, under the terms of the Note, this Mortgage, or the other Ancillary Agreements, constitute additional Indebtedness, with interest thereon as herein or therein provided; third, all principal and interest remaining unpaid on the Note; and fourth, the balance, if any, to Mortgagor, its successors, or assigns, as their rights may appear.

13. **Appointment of Receiver.** Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Property or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Property during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there by redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (A) the Indebtedness, or by any decree foreclosing this Mortgage, or any tax, special assessment, or other lien which may be or become superior to the lien hereof or

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of such decree, provided such application is made prior to foreclosure sale; and (B) the deficiency in case of a sale and deficiency.

14. **Mortgagee's Right of Possession in Case of Default.** (A) In any case in which under the provisions of this Mortgage Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the Property or any part thereof personally, or by its agents or attorneys, as for condition broken, and Mortgagee in its discretion may, with process of law, enter upon and take and maintain possession of all or any part of the Property, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the Property relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Property and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges, and powers herein granted at any and all times hereafter, without notice to Mortgagor, and with full power to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same, to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof, to make all necessary or proper repairs, replacements, alterations, additions, and improvements to the Property as may seem necessary to Mortgagee in its reasonable judgment, insure and reinsure the same and all risks incidental to Mortgagee's possession, operations, and management thereof and to receive all of such avails, rents, issues and profits.

(B) Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty, or liability under any leases, and Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases. Should Mortgagee incur any such liability, loss, or damage under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

15. **Application of Income Received by Mortgagee.** Mortgagee, in the exercise of the rights and powers conferred upon it by this Mortgage, shall have full power to use and shall apply the avails, rents, issues and profits from the sale of any part of the Property to the payment of or on account of the following, in such order as Mortgagee may determine:

(A) to the payment of the operating expenses of the Property or the cost of management and leasing of the Property (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(B) to the payment of taxes and special assessments now due or which may hereafter become due on the Property;

(C) to the payment of all repairs, replacements, alterations, additions, and improvements of the Property and of placing said property in such condition as will, in the judgment of Mortgagee, make it readily salable; and

(D) to the payment of any Indebtedness or any deficiency which may result from any foreclosure sale.

16. **Mortgagee's Right of Access and Inspection.** Mortgagee, its agents and representatives, shall have the right to inspect the Property at all reasonable times and upon reasonable notice, and access thereto shall be permitted for that purpose. All such inspections shall be for the sole benefit of Mortgagee and not for the benefit of Mortgagor or any other person. Mortgagor acknowledges that the periodic inspections of the Property made by or through Mortgagee are for loan administration purposes only, that neither Mortgagee nor any of its employees, representatives, agents or contractors assumes any responsibility or liability to any person by reason of such inspections and that neither Mortgagor nor any other person may rely upon such inspections for any purpose whatsoever. Mortgagor acknowledges and agrees that neither Mortgagee nor any of its employees, representatives, agents, or contractors shall be deemed in any way responsible to any person for any matters related to the Property except to the extent of any gross negligence or willful misconduct of Mortgagee or any of its employees.

17. **Condemnation.** Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any award or any claim for damages for any of the Property taken or damaged under the power of eminent domain or by condemnation. Provided that: (A) the remainder of the Property is sufficient for the practical restoration or rebuilding of the any improvements so taken; (B) an Event of Default has not occurred under the Note and Mortgagor is not in default of any of its obligations hereunder; and (C) Mortgagor's financial condition has not materially and adversely changed, the proceeds shall be held by Mortgagee and used to reimburse Mortgagor for the cost of the rebuilding or restoring of buildings or improvements on the Property, in accordance with plans and specifications to be submitted to and approved by Mortgagee. If the conditions set forth above for use of the condemnation proceeds for restoration or rebuilding are not met, Mortgagee will apply the proceeds to the Indebtedness in the order provided in Paragraph 12 hereof. Mortgagor may also request that Mortgagee allow Mortgagor itself to use said proceeds for the cost of rebuilding or restoring; Mortgagee may elect to permit Mortgagor to so use said proceeds in Mortgagee's reasonable discretion. In the event Mortgagor is required or authorized, by Mortgagee's elections aforesaid, to rebuild or restore, the proceeds of the award shall be paid out in the same manner as is

provided in Section 3 hereof for the payment of insurance proceeds toward the cost of rebuilding or restoration. If the amount of such award is insufficient to cover the cost of rebuilding or restoration, Mortgagor shall pay such cost in excess of the award, before being entitled to reimbursement out of the award. Any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall be applied, at the option of Mortgagee, on account of the Indebtedness or be paid to any party entitled thereto.

18. **Waiver of Defense.** No action for the enforcement of the lien or of any provisions hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note.

19. **Waiver of Statutory Rights.** Mortgagor 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 mortgaged property sold as an entirety. To the extent permitted by law, Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on its behalf and on behalf of each and every person, except decree or judgment creditors of Mortgagor, acquiring any interest in or title to the Property subsequent to the date of this Mortgage.

20. **Mortgagor's Additional Covenants.** Mortgagor further covenants and agrees with Mortgagee, its successors and assigns, as follows:

(A) **Mortgagor's Obligations in the Event of Casualty.** In the event of the happening of any casualty, of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (including any casualty for which insurance was not obtained or obtainable) resulting in damage to or destruction of the Property or any part thereof in excess of \$25,000, Mortgagor will give notice thereof to Mortgagee, and will promptly, at Mortgagor's sole cost and expense (whether or not there are sufficient and available insurance proceeds) commence and diligently continue to restore, replace, repair or rebuild the Property to be of at least equal value and substantially the same character and condition as prior to such casualty; provided that in any case where Mortgagee has elected to use insurance loss proceeds to apply on the Indebtedness, the provisions of this subsection shall not apply.

(B) **Compliance with Laws.** Mortgagor will comply in all material respects with all laws, ordinances, regulations, and orders of all governmental authorities applicable to its business or the use of its properties. Mortgagor may contest, in good faith, any such law, ordinance, regulation, or order and withhold compliance during any proceeding, including appropriate appeals, so long as Mortgagee's lien on the Property, in the opinion of Mortgagee, is not jeopardized.

(C) **Payment of Taxes.** Mortgagor shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges,

and other charges against the Property when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor. To prevent default hereunder Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagor may desire to contest.

(D) **Zoning Changes.** Mortgagor will not initiate or acquiesce in any zoning change without Mortgagee's written consent, which consent shall not be unreasonably withheld.

(E) **Demolition.** That no building or other property now or hereafter covered by the lien of this Mortgage shall be removed, demolished or materially altered, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld. Mortgagor shall have the right to remove and dispose of, free from the lien of this Mortgage, such equipment as from time to time may become worn out or obsolete in Mortgagor's reasonable judgment, provided that if: (1) simultaneously with or prior to the removal any such equipment, Mortgagor replaces it with other equipment, by such replacement Mortgagor shall be deemed to have subjected such equipment to the lien of this Mortgage; or (2) if Mortgagor does not replace such worn out or obsolete equipment, any net cash proceeds received from such disposition shall be promptly paid over to Mortgagee to be applied to the outstanding balance due on the Indebtedness, without any charge for prepayment.

(F) **No Transfer.** Mortgagor will not, without the prior written consent of Mortgagee, transfer, convey (including a conveyance to a land trust, except as otherwise provided below), assign, mortgage, or otherwise encumber the Property or any part thereof. Mortgagor shall be permitted to convey the Property to a land trust of which Mortgagor is the beneficiary or to a partnership of which Mortgagor is the general partner provided that: (1) Mortgagor obtains the prior written consent of Mortgagee to such conveyance; and (2) Mortgagor executes such additional documentation as may be reasonably required by Mortgagee and its counsel to protect and maintain Mortgagee's security interest in the Property upon such conveyance, including, in the case of a permitted conveyance to a land trust, granting a security interest in the beneficial interest of such land trust. The cost of such additional documentation will be at Mortgagor's sole expense.

21. **Assignment of Rents, Contracts and Leases.** (A) To further secure the Indebtedness, Mortgagor does hereby sell, assign and transfer to Mortgagee all the rents, issues and profits now due and which may hereafter become due under or by virtue of any contract or lease, whether written or oral, or any letting of, or of any agreement for the sale, use of occupancy of the Property or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all of such contracts, leases and agreements, and all the avails thereunder, unto Mortgagee, and Mortgagor does hereby irrevocably appoint Mortgagee its true and lawful attorney in its name and stead (with or without taking possession of the Property as provided herein) to rent, lease or let all or any portion of the Property to any party or parties at such rental and upon such terms as said Mortgagee shall, in its discretion, determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due or that may hereafter become due under each and every of the leases and agreements, written or oral or other tenancy existing, or which may hereafter exist on the

Property, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession pursuant to the provisions of hereof.

(B) Nothing herein contained shall be construed as constituting Mortgagee as a mortgagee in possession in the absence of the taking of actual possession of the Property by Mortgagee pursuant hereto. In the exercise of the powers herein granted Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor.

(C) Mortgagor further agrees to assign and transfer to Mortgagee all future leases upon all or any part of the Property and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments in the Property as Mortgagee shall from time to time require.

(D) Although it is the intention of the parties that the assignment contained in this Section shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that so long as Mortgagor is not in default hereunder or under the Note (and, in either case, after the expiration of all applicable cure or grace periods), it shall have the privilege of collecting and retaining the rents accruing under the leases assigned hereby and of leasing various areas in the Property, until such time as Mortgagee shall default hereunder and Mortgagee shall elect to collect such rents or lease such areas pursuant to the terms and provisions of this Mortgage.

22. **Security Agreement.** This Mortgage shall be deemed a Security Agreement as defined in the Code. This Mortgage creates a security interest in favor of Mortgagee in all property owned by Mortgagor which relates to and is used in connection with the Property. The remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be: (A) as prescribed herein, or (B) by general law; or (C) as to such part of the security which is also reflected in any Financing Statement filed to perfect the security interest herein created, by the specific statutory consequences now or hereafter enacted and specified in the Illinois Uniform Commercial Code, all at Mortgagee's sole election. Mortgagor and Mortgagee agree that the filing of such a Financing Statement in the records normally having to do with personal property shall never be construed as in any way derogating from or impairing this declaration and the stated intention of the parties hereto, that everything used in connection with the production of income from the Property and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether; (A) any such item is physically attached to the improvements; (B) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Mortgagee; (C) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of: (1) the rights in or the proceeds of any fire and/or hazard insurance policy; or (2) any award in eminent domain proceedings for a taking or for loss of value; or (3) the debtor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Property, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Mortgagee as determined by this instrument or impugning the priority of Mortgagee's lien granted hereby or

by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of Mortgagee in the event any court or judge shall at any time hold with respect to (1), (2) and (3) that notice of Mortgagee's priority of interest to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the Federal government, must be filed in the Commercial Code records.

Notwithstanding the aforesaid, Mortgagor covenants and agrees that so long as any balance remains unpaid on the Note, it will execute (or cause to be executed) and delivered to Mortgagee, such extension statements or other documentation in proper form, so as to keep perfected the lien created by any Security Agreement and Financing Statement given to Mortgagee by Mortgagor, and to keep and maintain the same in full force and effect until the entire Indebtedness and all interest to accrue thereunder has been paid in full. The failure of Mortgagor to provide any such document within fifteen (15) days after Mortgagee's request shall constitute a default hereunder and under the Note.

23. **Usury Laws.** If the Loan is or becomes subject to a law which sets maximum interest or loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then *ipso facto*: (A) any interest or loan charge shall be reduced by the amount necessary to reduce the interest or loan charge to the permitted limit, and paid according to the provisions of the Note; and (B) any sums already collected from Mortgagor that exceed the permitted limits will, if required by such law, be refunded to Mortgagor by either reducing the principal balance under the Note or by making direct payment to Mortgagor, at Mortgagee's election. In no event shall Mortgagor be bound to pay for the use, forbearance or detention of the interest of more than the legal limit, and Mortgagor hereby waives the right to demand any such excess. This provision shall control every other provision of this Mortgage, the Note, or any other Ancillary Agreement.

24. **General Provisions.**

(A) **Binding on Successors and Assigns.** This Mortgage and all provisions hereof shall extend to and be binding upon Mortgagor and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the Indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. The word "Mortgagee" when used herein shall include the successors and assigns of Mortgagee named herein, and the holder or holders, from time to time, of the Note.

(B) **Captions.** The captions and headings of various sections of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope, intent, or meaning of the provisions of this Mortgage.

(C) **Defeasance.** Upon payment by Mortgagor to Mortgagee of the Indebtedness and all other sums payable by Mortgagor to Mortgagee under this Mortgage, which payment is made either: (1) at or after the due date specified in the Note (including any extension as provided therein); or (2) prior to the due date of the Note and is accompanied by a written statement by Mortgagor that

no further draws will be made under the Note, and such payment is made in accordance with the provisions of the Note and in the manner and at the times therein set forth, without deduction, fraud, or delay, then this Mortgage, and the estate hereby granted, shall cease and become void.

(D) **Release.** Mortgagee shall release this Mortgage and the liens created hereby by proper instrument upon payment and discharge of all Indebtedness. Mortgagor shall pay to Mortgagee a reasonable fee for the preparation of any release instruments.

(E) **Incorporation of Riders, Exhibits and Addenda.** All riders, exhibits and addenda attached to this Mortgage are by express reference incorporated into and made a part of this Mortgage. The covenants contained in each of said riders, exhibits and addenda, and the other things therein set forth, shall have the same force and effect as though set forth in this Mortgage.

(F) **Assurances of Cooperation.** The parties agree that they will, at any time after the execution of this Mortgage, and from time to time, execute, acknowledge, and deliver or cause to be executed, acknowledged and delivered to each other the various documents which shall be reasonably required to carry out the various undertakings under this Mortgage and the creation or perfection of any security interest contemplated by this Mortgage. The parties further agree that each of them will use reasonable and diligent efforts to cause the conditions precedent hereto, if any, to be met.

(G) **No Waiver.** No failure by Mortgagor to exercise, or delay by Mortgagor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. No notice to or demand on Mortgagee in any case shall, in itself, entitle Mortgagee to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Mortgagor to any other or further action in any circumstances without notice or demand.

(H) **Rights and Remedies Cumulative.** All of Mortgagor's rights and remedies, whether set forth in this Mortgage, in the Ancillary Agreements, or in any other writing, are not exclusive of any right or remedy provided by law; all such rights and remedies shall be cumulative and may be exercised singularly or concurrently. Election by Mortgagor to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Mortgagee under this Mortgage, after the failure of Mortgagor to perform, shall not affect Mortgagee's right to declare a default and to exercise its remedies.

(I) **Notices.** Any notice, claim, request, or demand which any party hereto may be permitted or required to give to any other party hereto shall be in writing, and shall be deemed given: (a) if and when personally delivered; (b) upon receipt if sent by a nationally recognized overnight courier addressed to a party at its address set forth below; (c) on the second (2nd) business day after being deposited in United States registered or certified mail, postage prepaid; or (d) on the date of transmission if sent by telefacsimile transmission (provided that the sender retains proof of such transmission and mails a copy of such notice by regular mail not later than the next business day). All notices shall be addressed to a party at its address set forth herein or at such other place



as such party may have designated for itself by notice in writing in accordance herewith. Service or delivery of courtesy copies shall not be required to make any notice hereunder valid.

If to Mortgagor: Mr. Ronald Schimmel  
Option Products, Inc.  
5950 W. Howard Street  
Skokie, Illinois 60077  
Fax: (847) 647-7179

with a copy to: Richard Kruse, Esq.  
310 West Superior Street  
Chicago, Illinois 60610  
Fax: (312) 260-9090

if to Mortgagor: Mr. Kenneth J. Michalesko  
American Chartered Bank  
1199 East Higgins Road  
Schaumburg, Illinois 60173  
Fax: (847) 517-2848



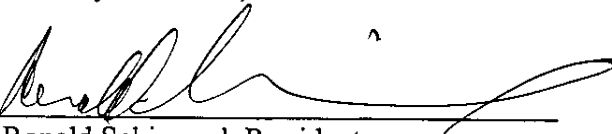
with a copy to: Douglas Conover, Esq.  
Rieck and Crosby, P.C.  
55 West Monroe Street, Suite 3390  
Chicago, Illinois 60603  
Fax: (312) 726-0647

(J) **Severability.** If any term or provision hereof should be held to be invalid, unenforceable, or illegal, such holding shall not invalidate or render unenforceable any other provision hereof, and the remaining provisions shall not be impaired thereby.

(K) **Governing Law.** This Mortgage shall be governed by and interpreted in accordance with the laws of the State of Illinois. Mortgagor hereby consents to the jurisdiction of any state or federal court located within Cook County, Illinois. Mortgagor hereby waives trial by jury and waives any objection Mortgagor may have based on improper venue or *forum non conveniens* to the conduct of any proceeding instituted hereunder.

MORTGAGOR:

MAC Realty of Skokie, Inc.

By:   
Ronald Schimmel, President



# UNOFFICIAL COPY

## EXHIBIT A

### Legal Description

Lot 17 in Anderson's Austin Gross Point Industrial subdivision of part of the Northeast 1/4 and part of the Northwest 1/4 of Section 29, Township 41 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

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