

When Recorded Mail To:

Adam J. Biehl, Esq.  
Myers & Frayne Co., LPA  
18 West First Street  
Suite 200  
Dayton, Ohio 45402



Property of Cook County Recorder's Office

## MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on April 21, 1999. The mortgagors are ROBERT L. KATOR and JUDITH T. KATOR, husband and wife ("Borrowers"). This Security Instrument is given to MOTO PHOTO, INC., which is organized and existing under the laws of Delaware, and whose address is 4444 Lake Center Drive, Dayton Ohio 45426 ("Lender"). Borrowers owe Lender the principal sum of Fifty-four Thousand Three Hundred Forty-three and 95/100 Dollars (U.S. \$54,343.95). This debt is evidenced by Borrowers' note dated March 15, 1999 ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on March 15, 2004. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest at the rate of twelve and 75/100 percent (12.75%) per annum, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 6 to protect the security of this Security Instrument; and (c) the performance of Borrowers' covenants and agreements under this Security Instrument, the Note, a Franchise Agreement dated June 28, 1990 and a Security Agreement of even date with this Security Instrument. For this purpose, Borrowers do hereby mortgage, grant and convey to Lender the following described property located in Cook County, Illinois:

THE SOUTH 65 FEET OF THE NORTH 190 FEET OF LOT 449 IN ARTHUR T. MCINTOSH AND COMPANY'S THIRD ADDITION TO GLENVIEW COUNTRYSIDE, BEING A SUBDIVISION OF PARTS OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 42, NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

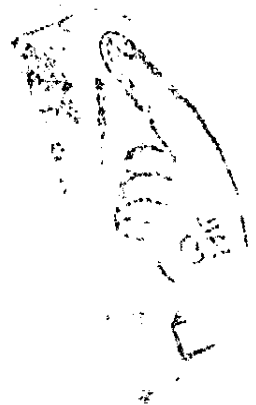
04-33-301-058

which has the address of 813 Revere, Glenview, Illinois 60025 ("Property Address").

S. YES  
P. J  
N. NO  
M. YES  
F.M.

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TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWERS COVENANT that Borrowers are lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and the Property is unencumbered, except for the encumbrances of record. Borrowers warrant and will defend the title to the Property against all claims and demand, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrowers and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Borrowers shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under paragraph 1 shall be applied; first, to costs of collection; second, to accrued but unpaid interest; third, to late charges; and last, to principal due under the Note.

3. **Charges; Liens.** Borrowers shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrowers shall pay these obligations on time directly to the person owed payment. Borrowers shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. Borrowers shall promptly furnish to Lender receipts evidencing the payments.

Borrowers shall promptly discharge any lien which has priority over this Security Instrument unless Borrowers: (a) agree in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contest in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any

part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrowers a notice identifying the lien. Borrowers shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

**4. Hazard or Property Insurance.** Borrowers shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrowers subject to Lender's approval which shall not be unreasonably withheld. If Borrowers fail to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 6.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrowers shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrowers shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrowers.

Unless Lender and Borrowers otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrowers. If Borrowers abandon the Property, or do not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. In any event, Lender may use the insurance proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrowers otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraph 1 or change the amount of the payments. If under paragraph 18 the Property is acquired by Lender, Borrowers' rights to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

5. **Occupancy, Preservation, Maintenance and Protection of the Property; Borrowers' Loan Application; Leaseholds.** Borrowers shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrowers shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrowers may cure such a default and reinstate, as provided in paragraph 15, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrowers' interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest.

6. **Protection of Lender's Rights in the Property.** If Borrowers fail to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 6, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 6 shall become additional debt of Borrowers secured by this Security Instrument. Unless Borrowers and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrowers requesting payment.

7. **Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrowers notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

8. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total or partial taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrowers.

If the Property is abandoned by Borrowers, or if, after notice by Lender to Borrowers that the condemnor offers to make an award or settle a claim for damages, Borrowers fail to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrowers otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraph 1 or change the amount of such payments.

**9. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrowers or Borrowers' successors in interest. Lender shall not be required to commence proceedings against successors in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrowers or Borrowers' successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right to remedy.

**10. Successors and Assigns Bound; Joint and Several Liability.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrowers, subject to the provisions of paragraph 14. Borrowers' covenants and agreements shall be joint and several.

**11. Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum 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: (a) any such loan charge shall be reduced by the amount necessary to reduce the charges to the permitted limit; and (b) any sums already collected from Borrowers which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrowers. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

**12. Notices.** Any notice to Borrowers provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrowers designate by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrowers. Any notice provided

for in this Security Instrument shall be deemed to have been given to Borrowers or Lender when given as provided in this paragraph.

**13. Governing Law; Severability.** This Security Instrument shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

**14. Transfer of the Property or a Beneficial Interest in Borrowers.** If all or any part of the Property or any interest in it is sold or transferred without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument.

If Lender exercises this option, Lender shall give Borrowers notice of acceleration. The notice shall provide a period of not less than 10 days from the date the notice is delivered or mailed within which Borrowers must pay all sums secured by this Security Instrument. If Borrowers fail to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrowers.

**15. Borrowers' Right to Reinstate.** If Borrowers meet certain conditions, Borrowers shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrowers: (a) pay Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrowers' obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrowers, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 14.

**16. Sale of Note; Change of Loan Servicer.** The Note or a partial interest in the Note (together with this Security Instrument) may be sold or assigned by Lender one or more times without prior notice to Borrowers. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due

under the Note and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrowers will be given written notice of the change in accordance with paragraph 12 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

**17. Hazardous Substances.** Borrowers shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrowers shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law.

Borrowers shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrowers have actual knowledge. If Borrowers learn, or are notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrowers shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 17, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 17, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety, or environmental protection.

**NON-UNIFORM COVENANTS.** Borrowers and Lender further covenant and agree as follows:

**18. Acceleration; Remedies.** Lender shall give notice to Borrowers prior to acceleration following Borrowers' breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under paragraph 16 unless applicable law provides otherwise) or any other default under the Note. The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 5 days from the date the notice is given to Borrowers, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security



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Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and the costs of title evidence.

19. **Release.** Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrowers. Borrowers shall pay any recordation costs.

20. **Waiver of Homestead.** Borrowers waive all right of homestead exemption in the Property.

BY SIGNING BELOW, Borrowers accept and agree to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrowers and recorded with it.

*Robert L. Kator*

ROBERT L. KATOR  
Social Security Number: 331-38-5414

*Judith T. Kator*

JUDITH T. KATOR  
Social Security Number: 326-36-0722

STATE OF ILLINOIS )  
 )  
COUNTY OF COOK ) SS:

I, DONALD A. SMITH a Notary Public for said county and state, do hereby certify that Robert L. Kator and Judith T. Kator, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this date in person, and acknowledged that they signed and delivered the instrument as their free and voluntary act, for the uses and purposes therein set forth.

Dated: April 21, 1999

Donald A. Smith  
Notary Public  
My Commission Expires: 1/8/2001

MotoPhoto, Inc./Robert&JudyKator  
Mortgage2  
3/22/99/4/ajb/atty2

