

# UNOFFICIAL COPY

12613

mort2nd.111

93727417



THIS DOCUMENT PREPARED BY AND  
RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:  
Steven L. Wilner, Esq.  
Cleary, Gottlieb, Steen & Hamilton  
One Liberty Plaza  
New York, New York 10006

DEPT-01 RECORDINGS \$101.00  
140011 TRAM 6889 09/13/93 1312100  
13976 \* 25 727417  
COOK COUNTY RECORDER

15H19

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

Dated and effective as of September 3, 1993

between

ARPLACE LIMITED PARTNERSHIP,  
a Delaware limited partnership,  
as Mortgagor and debtor,

and

VALUE LINE MORTGAGE CORPORATION,  
a Pennsylvania corporation,  
as Mortgagee and secured party

93727417

The Permanent Index Numbers (PIN) of the property  
encumbered hereby are 03-29-326-012, 03-29-326-013, 03-29-326-  
008, 03-29-326-014, 03-29-326-005, 03-29-326-004, 03-29-326-003,  
03-29-326-002, 03-29-326-001, 03-29-335-004, 03-29-335-005, 03-  
29-335-007, 03-29-335-006, 03-29-335-002 and 03-29-335-001; the  
address of the property encumbered hereby is 200 Arlington Place,  
Arlington Heights, Illinois.

10150

# UNOFFICIAL COPY

## Table of Contents

<u>Section</u>	<u>Page</u>
1. DEFINITIONS	
1.1 Definitions . . . . .	4
1.2 Principles of Construction . . . . .	8
1.3 Headings . . . . .	8
1.4 Pronouns and Plurals . . . . .	8
2. COVENANTS OF MORTGAGOR; INCORPORATION OF REPRESENTATIONS, WARRANTIES AND COVENANTS	
2.1 Covenants of Mortgagor . . . . .	8
2.2 Incorporation by Reference of Representations, Warranties and Covenants . . . . .	9
3. SECURITY AGREEMENT	
3.1 Rights to Collateral under the Commercial Code . . . . .	9
3.2 Fixture Filing . . . . .	10
3.3 Principal Place of Business . . . . .	10
4. ASSIGNMENT OF LEASES AND RENTS	
4.1 Authority to Collect Rents . . . . .	11
4.2 Collection and Application of Rents . . . . .	12
4.3 Limitation on Liability; Indemnity . . . . .	12
4.4 Mortgagor's Collection of Rents . . . . .	12
5. DEFAULT; FORECLOSURE AND OTHER REMEDIES	
5.1 Remedies . . . . .	13
5.2 Rescission of Notice of Event of Default . . . . .	17
5.3 Appointment of Receiver . . . . .	17
5.4 Application of Proceeds . . . . .	18
5.5 Additional Security . . . . .	19
5.6 Waiver of Right of Redemption and other Rights . . . . .	19
5.7 Remedies Cumulative . . . . .	20
5.8 Attorney-in-Fact . . . . .	20
5.9 Legal Requirements . . . . .	20
5.10 Special State Provisions . . . . .	20
6. MISCELLANEOUS	
6.1 Performance at Mortgagor's Expense . . . . .	20
6.2 Mortgagee's Right to Perform the Obligations . . . . .	20
6.3 Survival of Obligations . . . . .	21
6.4 Notices . . . . .	21
6.5 No Waiver; Remedies . . . . .	22
6.6 Covenants Running with the Land . . . . .	22
6.7 Further Assurances . . . . .	23
6.8 Severability . . . . .	23

93727417

# UNOFFICIAL COPY

<u>Section</u>	<u>Page</u>
6.9 Entire Agreement and Modification . . . . .	23
6.10 Governing Law . . . . .	23
6.11 Limitation on Mortgagee's Responsibility . . . . .	23
6.12 Hold Harmless . . . . .	24
6.13 Marshalling; Payments Set Aside . . . . .	24
6.14 Waiver of Jury Trial; Consent to Jurisdiction . . . . .	24
6.15 Future Advances . . . . .	25
6.16 Lien Absolute, Multisite Real Estate and Multiple Collateral Transaction . . . . .	26
6.17 Interest Rate Limitation . . . . .	27
6.18 Non-Recourse Obligations . . . . .	27
6.19 Assignees . . . . .	27
6.20 No Merger of Estates . . . . .	27
6.21 Subordination; Subrogation . . . . .	28
6.22 Disclosure . . . . .	28
6.23 [intentionally omitted] . . . . .	28
 Annex 1	Special State Provisions
 Exhibit A	Property Description

Property of Cook County Clerk's Office

93727417

# UNOFFICIAL COPY

## SECOND MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING STATEMENT, ASSIGNMENT OF LEASES AND RENTS AND FINANCING STATEMENT

THIS SECOND MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING STATEMENT, ASSIGNMENT OF LEASES AND RENTS AND FINANCING STATEMENT, dated and effective as of September 3, 1993, between ARPLACE LIMITED PARTNERSHIP, a limited partnership organized under the laws of the State of Delaware, the mortgagor and debtor hereunder (together with its permitted successors and assigns, "Mortgagor"), whose address for all purposes hereunder is c/o G. Soros Realty, Inc. 888 Seventh Avenue, New York, New York 10106, and VALUE LINE MORTGAGE CORPORATION, a corporation organized under the laws of the Commonwealth of Pennsylvania, the mortgagee and secured party hereunder (together with its permitted successors and assigns, "Mortgagee"), whose address for all purposes hereunder is 1916 Watchester Drive, Silver Spring, Maryland 20902.

### W I T N E S S E T H:

WHEREAS, THIS MORTGAGE (as defined below) is given to secure all the obligations described in clauses (A) through (C) immediately below (which are sometimes hereinafter collectively referred to as the "Obligations"):

(A) the payment and performance of all obligations of Mortgagor under that certain Cross-Guarantee (as the same may be hereafter amended, modified or extended, the "Cross-Guarantee"), of even date herewith, executed and delivered by Mortgagor and the other guarantors named therein to Mortgagee pursuant to the Loan Agreement (as defined below), under which Mortgagor and the other guarantors named therein guarantee the payment and performance of obligations under the Loan Documents of the borrowers identified therein, according to the terms and conditions specified in the Cross-Guarantee; and

(B) the payment of all sums advanced by Mortgagee to Mortgagor under or pursuant to this Mortgage, with interest earned thereon at the rates specified therein; and

(C) the payment and performance of all other obligations and agreements of Mortgagor contained in the Cross-Guarantee and each agreement of Mortgagor incorporated

93727417

# UNOFFICIAL COPY

by reference therein or herein, or contained therein or herein.

WHEREAS, this Mortgage is given pursuant to the Loan Agreement, and each and every term and provision of the Loan Agreement and the Cross-Guarantee, including the rights, remedies, covenants, conditions, agreements, indemnities, representations and warranties of the Mortgagor therein (except for the governing law provisions thereof), are hereby incorporated herein by reference as though set forth in full herein and shall be considered a part of this Mortgage; a copy of the Loan Agreement and the Cross-Guarantee are available for inspection at the offices of Cleary, Gottlieb, Steen and Hamilton, One Liberty Plaza, New York, New York 10006;

WHEREAS, Mortgagor is the fee owner of the real property described in Exhibit A attached hereto and made a part hereof (the "Land");

NOW, THEREFORE, with reference to the foregoing recitals, in reliance thereon and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

Mortgagor does hereby grant, mortgage, warrant, pledge, assign and transfer to Mortgagee and its successors and assigns the following property (collectively, the "Mortgaged Property"):

- (i) all of Mortgagor's estate, right, title and interest in and to the Land;
- (ii) all of Mortgagor's right, title and interest in and to the Buildings (as defined below), and any alterations thereto or replacements thereof, now or hereafter erected upon the Land;
- (iii) all of Mortgagor's right, title and interest in and to all Fixtures (as defined below) now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Land or the Buildings, together with any and all replacements thereof and additions thereto;
- (iv) all of Mortgagor's right, title and interest in and to all Equipment and Personalty (as such terms are defined below) now or at any time hereafter located at or used in connection with the Land or the Buildings, together with any and all replacements thereof and additions thereto;
- (v) all of Mortgagor's right, title and interest in, to and under all Leases (as defined below), now or hereafter entered into, and in and to all cash or securities deposited thereunder to secure performance by the lessees of their

93727417

# UNOFFICIAL COPY

obligations under the Leases and the right to receive and collect the Rents (as defined below) thereunder;

(vi) all of Mortgagor's right, title and interest now owned or hereafter acquired in and to the permits, licenses and rights relating to the use, occupation and operation of the Land and the Buildings and any part thereof;

(vii) all of Mortgagor's right, title and interest in and to all rights of way or use, air rights, water rights (whether riparian, appropriative, or otherwise), utility rights, privileges, franchises, servitudes, easements, tenements, hereditaments and appurtenances now or hereafter belonging or appertaining to any of the foregoing or to the Land; all of Mortgagor's rights as a member of any association of owners pursuant to any declarations of use or restrictive covenants or similar instruments and all of Mortgagor's rights pursuant to any restrictive covenants; and all of Mortgagor's right, title and interest in and to any streets, ways, alleys, roadbeds, inclines, tunnels, culverts, strips or gores of land adjoining or serving the Land or any part thereof, whether now owned or hereafter acquired by Mortgagor;

(viii) all of Mortgagor's right, title and interest in and to all Rents, issues, profits, proceeds and products arising from any of the foregoing and all of Mortgagor's right, title and interest, if any, to all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards, subject to the Loan Agreement; and

(ix) all of Mortgagor's right, title and interest in and to other security and collateral of any nature whatsoever, now or hereafter given by Mortgagor, to secure the payment and performance of the Obligations.

"Mortgaged Property", including each component thereof, shall be expressly interpreted as meaning all or, where the context permits or requires, any portion of the above, and all or, where the context permits or requires, any interest of Mortgagor therein.

AND without limiting any of the other provisions of this Mortgage, Mortgagor expressly grants to Mortgagee, as secured party, a security interest in the portion of the Mortgaged Property which is or may be subject to the provisions of the Uniform Commercial Code as in effect from time to time in the state in which the Mortgaged Property is located (the "Commercial Code") which are applicable to secured transactions; it being understood and agreed that the Buildings and Fixtures are part and parcel of the Real Property (as defined below) and appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this

93727417

# UNOFFICIAL COPY

Mortgage be deemed conclusively to be real estate and mortgaged hereby.

TO HAVE AND TO HOLD as provided herein the above granted and described Mortgaged Property unto Mortgagee and its assigns, substitutes and successors forever, and Mortgagor hereby binds itself and its successors and assigns to warrant and forever defend the Mortgaged Property unto Mortgagee and its assigns, substitutes and successors against the claim or claims of all parties claiming or to claim the same, or any part thereof.

PROVIDED, HOWEVER, that if Mortgagor shall pay or cause to be paid in full to Mortgagee all monetary Obligations hereunder and under the Cross-Guarantee on or before the date on which they are due and payable in accordance with the terms hereof and thereof, and in the manner stipulated herein and therein, all without deduction or credit for taxes or other charges paid by Mortgagor, and if Mortgagor shall have kept, performed and observed all the covenants and conditions contained in this Mortgage and all of the other Loan Documents, then Mortgagee shall deliver to Mortgagor, all such documents, in recordable form, as shall be necessary to release the Mortgaged Property from the Encumbrances created hereby, but otherwise this Mortgage shall remain in full force and effect.

AND TO PROTECT THE SECURITY OF THIS MORTGAGE, Mortgagor represents, warrants, covenants and agrees as follows:

## Article 1

### DEFINITIONS

1.1. Definitions. Capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Loan Agreement. As used herein, the following terms shall have the following meanings:

"Buildings" shall mean any and all buildings, structures, utility sheds, workrooms, air conditioning towers, open or closed parking areas, and all other structures and improvements of every kind whatsoever, and any and all additions, alterations, replacements, betterments or appurtenances thereto, now or at any time hereafter situated, placed or constructed on, over or under the Land or any part thereof.

"Collateral" shall have the meaning set forth in Section 3.1 hereof.

"Commercial Code" shall have the meaning provided in the granting clauses hereof.

93727417



# UNOFFICIAL COPY

"Co-Obligors" shall mean Quantum Realty Fund Ltd., Quantum Realty Partners, L.P. and QRP Limited Partnership (together with their permitted successors and assigns).

"Cross-Guarantee" shall have the meaning provided in the recitals hereto.

"Equipment" shall mean all "equipment", as such term is defined in Article 9 of the Commercial Code, now owned, or hereafter acquired and owned by Mortgagor, which is used at or in connection with the Buildings or the Land and is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Mortgagor and any and all additions, substitutions and replacements of any of the foregoing, to the extent located on or in the Mortgaged Property), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto. Notwithstanding the foregoing, Equipment shall not include (i) any property belonging to tenants under Leases except to the extent that Mortgagor has or shall have any right or interest therein or (ii) any equipment with respect to which Mortgagor is the lessee if the grant by Mortgagor of a security interest in such property would constitute a breach of the lease by which Mortgagor leases such property.

"Fixtures" shall mean all Equipment now owned or hereafter acquired by Mortgagor which is so related to the Land and Buildings that it is deemed fixtures or real property under the law of the state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on or in the Mortgaged Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatus, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Buildings or the Land, including, but not limited to, Equipment, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, water tanks, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgagor's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof.

93727417



# UNOFFICIAL COPY

Notwithstanding the foregoing, "Fixtures" shall not include (i) any property belonging to tenants under Leases or which tenants are entitled to remove pursuant to Leases, in each case, except to the extent that Mortgagor has or shall have any right or interest therein or (ii) any property or other items included within the foregoing definition with respect to which Mortgagor is the lessee if the grant by Mortgagor of a security interest in such property would constitute a breach of the lease by which Mortgagor leases such property.

"Governmental Authority" shall mean any court, board, agency, commission, office or authority of any nature whatsoever for any governmental, judicial, legislative, executive, administrative or regulatory unit (foreign, federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

"Impositions" shall mean all real estate and personal property taxes, water, sewer, and vault charges and all other taxes, levies, assessments and other similar charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of every kind and nature whatsoever, which at any time prior to, at, or after the execution hereof may be assessed, levied or imposed by, in each case, a Governmental Authority upon the Mortgaged Property or the Rents or the ownership, use, occupancy or enjoyment thereof, and any interest, costs or penalties with respect to any of the foregoing.

"Land" shall have the meaning provided in the recitals hereto.

"Laws" shall mean any order, writ, injunction, decree, demand, judgment, ruling, decision, determination, award, law, statute, ordinance, code, rule, regulation, standard, requirement, criteria, interpretation, or Permit of any Governmental Authority, or any binding agreement with any Governmental Authority.

"Leases" shall mean any and all leases, or, to the extent of the interest therein of Mortgagor, subleases or sub-subleases, licenses, concessions or other agreements (whether written or oral and whether now or hereafter in effect) pursuant to which any person is granted a possessory interest in, or right to use or occupy all or any portion of the Mortgaged Property, and all modifications, amendments or other agreements relating to such leases, subleases, sub-subleases or other agreements, and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

"Loan Agreement" shall mean the Loan Agreement, dated the date hereof, among Mortgagee, Mortgagor, Co-Obligors and the other parties named therein, as the same may be amended,

93727417

# UNOFFICIAL COPY

restated, replaced, supplemented or otherwise modified from time to time.

"Mortgage" shall mean this Mortgage, Security Agreement, Fixture Filing Statement, Assignment of Leases and Rents and Financing Statement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Mortgaged Property" shall have the meaning provided in the granting clauses hereof.

"Mortgagee" shall have the meaning provided in the recitals hereto.

"Mortgagor" shall have the meaning provided in the recitals hereto.

"Obligations" shall have the meaning provided in the recitals hereto.

"Permit" shall mean any and all permits, licenses, operating authorizations, certificates, variances, waivers, approvals or other authorizations of any kind issued or granted by any Governmental Authority which are required in connection with the maintenance and operation of the Mortgaged Property.

"Permitted Encumbrances" shall have the meaning set forth in Section 2.1(a).

"Personalty" shall mean all furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts receivable, franchises, licenses, certificates and Permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Commercial Code), other than Fixtures, which are now or hereafter owned by Mortgagor and which are located within or about or used in connection with or are related to the ownership or operation of the Land and the Buildings, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof. Notwithstanding the foregoing, Personalty shall not include (i) any property belonging to tenants under the Leases except to the extent that Mortgagor has or shall have any right or interest therein or (ii) any property or other items included within the foregoing definition which are leased by Mortgagor if the grant by Mortgagor of a security interest in such property would constitute a breach of the lease by which Mortgagor leases such property.

"Real Property" shall mean, collectively, the Land, the Buildings and the Fixtures.

93727417

# UNOFFICIAL COPY

"Rents" shall mean all the rents, revenues, income, proceeds, profits, security and other types of deposits, and other benefits paid or payable and to become due or payable to Mortgagor in respect of the use, occupancy, license or possession of any portion or portions of the Mortgaged Property pursuant to the Leases.

"Sale" shall have the meaning set forth in Section 2.1(c).

1.2. Principles of Construction. All references to sections, schedules and exhibits are to sections, schedules and exhibits in or to this Mortgage unless otherwise specified. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Mortgage shall refer to this Mortgage as a whole and not to any particular provision of this Mortgage. All meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

1.3. Headings. The Article and Section titles herein are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles or Sections.

1.4. Pronouns and Plurals. All pronouns used herein shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require, and the singular form of nouns, pronouns and verbs shall include the plural, and vice versa, whichever the context may require.

## Article 2

### COVENANTS OF MORTGAGOR; INCORPORATION OF REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1. Covenants of Mortgagor. Mortgagor hereby covenants and agrees with Mortgagee that:

(a) it shall not create, incur, assume or suffer to exist any Encumbrance on any Mortgaged Property or any part thereof, except the following (collectively, "Permitted Encumbrances"):

(i) All exceptions to title set forth in Schedule B of the marked up title insurance commitment dated on or about the date hereof insuring the lien of this Mortgage (other than notes or other informational items set forth therein);

(ii) Encumbrances created by the Loan Documents;

# UNOFFICIAL COPY

(iii) Encumbrances permitted by the Loan Agreement;  
and

(iv) Encumbrances created by the Leases.

(b) it shall not incur, create, assume or suffer to exist or otherwise become or be liable in respect of any Indebtedness other than (i) Indebtedness created by virtue of the Loan Documents and (ii) Indebtedness permitted under the Loan Agreement; and

(c) it shall not sell, convey, transfer, assign or otherwise relinquish the Mortgaged Property or any part thereof, or any interest therein (other than pursuant to the Leases) (hereinafter, a "Sale") without the consent of the Mortgagee, unless the conditions set forth in Article 4 of the Loan Agreement pertaining to such Sale are met or such Sale is otherwise permitted pursuant to the Loan Agreement.

(d) it shall pay when due all of its monetary obligations under the Cross-Guarantee; including all charges, payments, fees, obligations and principal of, and interest on, any future advances secured by this Mortgage, and shall perform all of its non-monetary obligations under, and otherwise comply with all of the terms, of the Cross-Guarantee, this Mortgage, the Loan Agreement and all other related Loan Documents.

2.2. Incorporation by Reference of Representations, Warranties and Covenants. Each and every representation, warranty and covenant contained in Sections 6, 8 and 10 of the Loan Agreement pertaining to the Mortgaged Property are hereby incorporated herein by reference as though set forth in full herein and shall be considered a part of this Mortgage.

## Article 3

### SECURITY AGREEMENT

3.1. Rights to Collateral under the Commercial Code. This Mortgage is both a real property mortgage, and a "security agreement" within the meaning of the Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor, by executing and delivering this Mortgage, hereby grants to Mortgagee, as security for the Obligations, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the Commercial Code (said portion of the Mortgaged Property so subject to the Commercial Code being called in this Article 3 the "Collateral"). If an Event of Default shall occur and be continuing, Mortgagee, in addition to any other rights and remedies which it may have, shall have and

93727417

# UNOFFICIAL COPY

may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall, at its expense, assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including all expenses and reasonable fees of attorneys, incurred or paid by Mortgagee in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least five (5) business days prior to such action, shall, except as otherwise provided by law, constitute reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, shall, except as otherwise required by law, be applied by Mortgagee to the payment of the Obligations in accordance with Section 5.4 hereof.

3.2. Fixture Filing. This Mortgage is intended to constitute a financing statement filed as a fixture filing in accordance with the applicable provisions of the Commercial Code. The debtor is the Mortgagor and the secured party is the Mortgagee and their addresses are those set forth at the beginning of this Mortgage. Certain of the Mortgaged Property is or will become "fixtures" (as that term is defined in the Commercial Code) on the Land, described or referred to in this Mortgage and this Mortgage, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of the Commercial Code upon such of the Mortgaged Property that is or may become fixtures.

3.3 Principal Place of Business. Mortgagor represents and warrants that the principal place of business of Mortgagor and the place where Mortgagor's books and records in respect of the Mortgaged Property are kept is the address of Mortgagor first set forth above.

## Article 4

### ASSIGNMENT OF LEASES AND RENTS

4.1. Authority to Collect Rents. (a) Mortgagor does hereby assign to the Mortgagee the Leases and the Rents, and this assignment constitutes a present and absolute assignment. So long as there shall exist no Event of Default by Mortgagor, Mortgagor shall have the right, but limited as provided in this

93727417



# UNOFFICIAL COPY

Mortgage and in any of the other Loan Documents: (i) to collect all of the Rents for not more than one monthly installment in advance, other than a prepayment of the final monthly installment of Rent under any Lease or the security deposit under any Lease, and Mortgagor shall receive and apply such Rents (not necessarily in the following order), subject to any obligation to escrow same with Mortgagee, to the payment of taxes and assessments upon the Mortgaged Property before penalty or interest are due thereon, to the cost of such insurance, maintenance and repairs as may be required by the terms of this Mortgage, to satisfy all of Mortgagor's obligations under the Leases, and pay interest and principal and other charges becoming due, as and when due and payable, under the Loan Documents; and (ii) to otherwise deal with, and enjoy the rights of the lessor under, the Leases or in each of the foregoing case, as otherwise as permitted by the Loan Agreement; provided, however, that in the event a lock-box is established pursuant to the Loan Agreement, the Rents shall be collected and applied in accordance with the terms and conditions of the lock-box agreement by which such lock-box is established.

(b) Upon receipt by Mortgagor of any written request of Mortgagee, stating that an Event of Default by Mortgagor exists and Mortgagee is exercising its rights hereunder, the license referred to in Subsection 4.1(a) above shall thereupon be revoked by Mortgagee and Mortgagor hereby authorizes and directs any lessee under any of the Leases and any successor to all or any part of the interests of any such lessee to pay to Mortgagee the Rents due and to become due under the Leases. A demand on any lessee made by Mortgagee for such payment of Rents shall be sufficient warrant to the lessee to make future payments of Rents to Mortgagee without the necessity for further consent by the Mortgagor. Mortgagor agrees that upon the occurrence of an Event of Default (i) each lessee under any of the Leases shall have the right to rely upon any such request by Mortgagee, (ii) each lessee shall pay such Rents to Mortgagee without any obligation or right to inquire as to whether such Event of Default actually exists and notwithstanding any notice from or claim of Mortgagor to the contrary, (iii) Mortgagor shall have no right to claim against any lessee for any such Rents so paid by the lessee to Mortgagee and (iv) Mortgagee shall be entitled to collect, receive and retain all Rents regardless of when and to whom such Rents are and have been paid and regardless of the form or location of such Rents.

4.2. Collection and Application of Rents. Upon or at any time after the occurrence and during the continuance of an Event of Default, Mortgagee may, at its option, without waiving such Event of Default but after notice to Mortgagor, without regard to the adequacy of the security for the Obligations, either in person or by agent, without bringing any action or proceeding unless required by applicable Law, or by a receiver appointed by a court, without taking possession of the Mortgaged Property in its own name unless required by applicable Law, demand, sue for or otherwise collect and receive all Rents, including those past-due and unpaid, for

93727417



# UNOFFICIAL COPY

application to the payment of the Obligations in such manner and order as Mortgagee, in its sole discretion, may determine, subject, however, to the terms of the Loan Agreement; provided, however, that in the event a lock-box is established pursuant to the Loan Agreement, such Rents shall be applied to the payment of the Obligations in accordance with the terms and conditions of the agreement by which such lock-box is established. The exercise by Mortgagee of the option granted it in this Section and the collection of the Rents and the application thereof as herein provided shall not be considered a waiver of any Event of Default by Mortgagor under this Mortgage or any other Loan Document.

4.3. Limitation on Liability; Indemnity. Mortgagee shall not be obligated to perform or discharge any obligation, duty or liability of Mortgagor under any of the Leases by reason of this Article, and Mortgagor shall, and hereby agrees to indemnify Mortgagee for, and to hold Mortgagee harmless from and against, any and all claims, liability, expenses, losses or damages which may or might be asserted against or incurred by Mortgagee solely by reason of Mortgagee's status as an assignee (as opposed to Mortgagee's status as mortgagee in possession in the event Mortgagee takes possession of the Mortgaged Property) pursuant to the Assignment of Leases and Rents contained herein. Should Mortgagee incur any such claim, liability, expense, loss or damage, the amount thereof, including all expenses and reasonable fees of attorneys, shall constitute Obligations secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

4.4. Mortgagor's Collection of Rents. The payment of the Rents to accrue for any portion of the Mortgaged Property will not be waived, released, reduced, discounted or otherwise discharged or compromised by Mortgagor except as permitted in the Loan Agreement. Mortgagor waives any rights of set off against any person in possession of any portion of the Mortgaged Property. Mortgagor agrees that it will not assign any of the Rents except to a purchaser or grantee of the Mortgaged Property or in connection with the other Loan Documents.

## Article 5

### DEFAULT; FORECLOSURE AND OTHER REMEDIES

5.1. Remedies. The Loan Agreement contains provisions for the acceleration of the maturity of the obligations secured by the Cross-Guarantee upon the happening of certain Events of Default. Subject to the terms of Section 5.9 hereof, upon the commencement and during the continuance of an Event of Default, Mortgagee may also, at its election, after notice to or demand upon Mortgagor, without releasing Mortgagor from any obligation under the Loan Agreement or any other Loan Document and without waiving any rights Mortgagee may have hereunder or thereunder or impairing

93727417

# UNOFFICIAL COPY

any notice of an Event of Default or election to cause the Mortgaged Property to be sold or any sale proceeding predicated thereon:

(a) demand, collect or realize upon all or any part of the Mortgaged Property and assemble or require Mortgagor to assemble all or any part of the Mortgaged Property;

(b) commence, appear in or defend any action or proceeding purporting to affect all or any part of the Mortgaged Property or the interests, rights, powers or duties of Mortgagee therein, whether brought by or against Mortgagor or Mortgagee;

(c) pay, purchase, contest or compromise any claim, debt, lien, charge or encumbrance which in the reasonable judgment of Mortgagee may adversely affect the Mortgaged Property or the interest, rights, powers or duties of Mortgagee therein;

(d) in such manner and to such extent as Mortgagee may reasonably deem necessary or proper to protect the Mortgaged Property or the interests, rights, powers or duties of Mortgagee therein, enter into and upon the Mortgaged Property or any other property at which the Mortgaged Property may be located and take and hold exclusive possession of all or any portion of the Mortgaged Property, including all books, papers and accounts relating thereto, and exclude Mortgagor from the Mortgaged Property, and whether or not a receiver has been appointed pursuant to Section 5.3 hereof, operate, manage and control the Mortgaged Property and conduct the business, if any, thereof, either itself or by other persons and with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the income, Rents, issues, profits and proceeds of the Mortgaged Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor; and rent and lease the Mortgaged Property, cancel or terminate any Lease for any cause or on any ground which would entitle Mortgagor to cancel the same, extend or modify any Lease, perform such reasonable acts of repair or protection as Mortgagee may reasonably deem necessary or proper to conserve the value of the Mortgaged Property, and collect and apply any and all income, Rents, issues, profits and proceeds from the Mortgaged Property all in accordance with the terms hereof, subject to the terms of the Loan Agreement, it being understood that the collection or receipt of income, Rents, issues, profits or proceeds from the Mortgaged Property after an Event of Default shall not affect or impair any notice of an Event of Default or election to cause the Mortgaged Property to be sold or any sale proceedings predicated thereon, but such proceedings

# UNOFFICIAL COPY

may be conducted and sale effected notwithstanding the collection or receipt of any such income, Rents, issues, profits and proceeds;

(e) exercise the power of sale provided for in this Mortgage, in any manner permitted by Law or, at its option, foreclose this Mortgage in the manner provided by applicable Law for the foreclosure of mortgages on real property. In exercising the power of sale provided for in this Mortgage, Mortgagee may, without demand on Mortgagor except as otherwise required by law, sell the Mortgaged Property at the time and place of sale fixed by it in such notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale, provided that Mortgagee shall have the right to bid for such Mortgaged Property on the same terms as those of third parties to whom such Mortgaged Property has been offered at such sale (but the amount of the Obligations shall be reduced only to the extent of the actual proceeds received by Mortgagee or of the amount of the bid by Mortgagee, in the case of a sale of Mortgaged Property to Mortgagee, at such sale), subject to applicable Laws. Mortgagee may postpone sale of all or any portion of the Mortgaged Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Any person, including Mortgagor or Mortgagee, may purchase at such sale or sales.

Without limiting the foregoing:

(i) In connection with any sale or sales hereunder, Mortgagee shall be entitled to elect to treat any of the Mortgaged Property which consists of a right in action or which is property that can be severed from the Real Property covered hereby or any improvements without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with applicable Law, separate and apart from the sale of Real Property. Mortgagee shall be entitled to elect to proceed against all or any portion of the Real Property, Personalty and Fixtures in such order and manner as is now or hereafter permitted under applicable Law; and if Mortgagee so elects pursuant to applicable Law, the power of sale herein granted shall be exercisable with respect to all or any portion of the Real Property, Personalty and Fixtures covered hereby, as designated by Mortgagee, and Mortgagee is hereby authorized and empowered to conduct any such sale of any Real Property, Personalty and Fixtures in accordance with the procedures applicable to Real Property;

93727417

# UNOFFICIAL COPY

(ii) Should Mortgagee elect to sell any portion of the Mortgaged Property which is Real Property or which is Personalty or Fixtures that the Mortgagee has elected under applicable law to sell together with Real Property in accordance with the laws governing a sale of Real Property, Mortgagee shall give such notice of Event of Default and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, and without the necessity of any demand on Mortgagor, Mortgagee, at the time and place specified in the notice of sale, shall sell said Real Property or part thereof at public auction to the highest bidder for cash in lawful money of the United States;

(iii) If the Mortgaged Property consists of several lots, parcels or items of property, Mortgagee, subject to applicable Law, (A) shall designate the order in which such lots, parcels or items shall be offered for sale or sold, or (B) may elect to sell such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner Mortgagee designates. Should Mortgagee desire that more than one sale or other disposition of the Mortgaged Property be conducted, Mortgagee, subject to applicable Law, may cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Mortgagee may designate, and no such sale shall terminate or otherwise affect the lien of this Mortgage on any part of the Mortgaged Property not sold until all the Obligations hereby secured have been paid in full. If Mortgagee elects to dispose of the Mortgaged Property through more than one sale, except as otherwise provided by law, Mortgagor agrees to pay the reasonable costs and expenses of each such sale and of any judicial proceedings wherein such sale may be made;

(f) [intentionally omitted]

(g) take over and direct collection of the Rents that are included in the Mortgaged Property and the proceeds thereof, direct persons obligated to pay Rent to make payments as Mortgagee, in its sole discretion, may determine, subject to Section 4.2 hereof and to the terms of the Loan Agreement (and, at the request of Mortgagee, Mortgagor shall indicate on all billings that payments thereon are to be made to Mortgagee); provided, however, that in the event a lock-box is established pursuant to the Loan Agreement, such Rents shall be collected in accordance with the terms and conditions of the agreement by which such lock-box is established; and give any person so notified and

93727417

# UNOFFICIAL COPY

directed the receipt of Mortgagee for any such payment as full release for the amount so paid;

(h) take control of any and all of the Rents, accounts, contractual and other rights that are included in the Mortgaged Property and proceeds arising from any such contractual and other rights and enforce collection, either in the name of Mortgagee or in the name of Mortgagor, of any or all of the Rents, accounts, contractual and other rights that are included in the Mortgaged Property and proceeds thereof by suit or otherwise, and receive, receipt for, surrender, release or exchange all or any part thereof or compromise, settle, extend or renew (whether or not longer than the original period) any indebtedness thereunder;

(i) endorse in the name of Mortgagor any instrument, howsoever received by Mortgagee, representing Mortgaged Property or proceeds of any of the Mortgaged Property; and

(j) subject to the provisions of Article 3 hereof, exercise all the rights and remedies granted to a secured party under Article 9 of the Commercial Code and all other rights and remedies given to Mortgagee by this Mortgage or any other Loan Document or otherwise available at law or in equity.

(k) on written notice to Mortgagor, declare the entire indebtedness secured hereby, and all interest thereon and all advances made by Mortgagee hereunder and Obligations in respect hereof, immediately due and payable and/or exercise all additional rights accruing to it under this Mortgage, as provided in the Loan Agreement.

Mortgagee shall not be under any obligation to make any of the payments or do any of the acts referred to in this Section 5.1, and, except as otherwise required by Law, any of the actions referred to in this Section 5.1 may be taken irrespective of whether any notice of Event of Default or election to sell has been given hereunder (provided, however, that all notices required by this Mortgage, any of the other Loan Documents or by Law shall be given in accordance with this Mortgage, such other Loan Document or such Law) and without regard to the adequacy of the security for the Obligations. Mortgagee shall have the right from time to time to take other action to recover any sum or sums which constitute a part of the Obligations as such sum or sums become due, without regard to whether or not the balance of the Obligations shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure (after applicable notice and cure periods, if any), or any other action, by reason of an Event of Default by Mortgagor existing at the time such earlier action was commenced. The costs and expenses (including, without limitation, all expenses and reasonable fees of attorneys) of Mortgagee and Mortgagee's agents incurred in connection with the preservation, collection and enforcement of

93727417



# UNOFFICIAL COPY

this Mortgage or of the liens granted hereby (whether suit be brought or not, and at all pre-trial, trial and appellate levels, including, without limitation, in connection with any bankruptcy proceedings, and as provided in the Loan Agreement), including, without limitation, any amounts advanced by Mortgagee to protect or preserve the Mortgaged Property, shall constitute additions to the Obligations and shall be secured hereby, and Mortgagor covenants and agrees to pay them to the order of Mortgagee promptly upon demand.

5.2. Rescission of Notice of Event of Default. Mortgagee, at any time before the sale, may rescind any notice of Default or Event of Default and of election to cause any Mortgaged Property to be sold. The exercise by Mortgagee of such right of rescission shall not (unless otherwise expressly provided by the terms of such rescission) constitute a waiver of any Event of Default then existing or subsequently occurring, shall not impair the right of Mortgagee to cause any Mortgaged Property to be sold and shall not otherwise affect any provision, agreement, covenant or condition of this Mortgage, the Loan Agreement or any other Loan Document or the rights, obligations or remedies of the parties hereunder or thereunder.

5.3. Appointment of Receiver. Upon the occurrence and during the continuance of an Event of Default, Mortgagee, upon written notice to Mortgagor and as a matter of right, and without regard to the value of the Mortgaged Property or any other security for the indebtedness secured by the Mortgaged Property at such time or the interest of Mortgagor in the Mortgaged Property or the insolvency of any party bound for payment of such indebtedness, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Property, and Mortgagor hereby irrevocably consents to such appointment. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Mortgagee in case of entry as provided herein and shall continue as receiver or receivers and exercise all such powers until the date of sale of the Mortgaged Property unless such receivership is sooner terminated.

5.4. Application of Proceeds. (a) To the extent permitted by applicable Law and except as otherwise required by applicable Law, all proceeds received from the sale or other disposition of any portion of the Mortgaged Property pursuant to this Mortgage shall be applied by Mortgagee in accordance with the following priorities:

First: to the costs and expenses of the sale or other disposition of the Mortgaged Property, including, without limitation, the reasonable fees and expenses incurred by Mortgagee in connection with the services of attorneys, appraisers, environmental consultants and engineers and other experts; reasonable costs and expenses



# UNOFFICIAL COPY

incurred by Mortgagee in enforcing and preserving its rights under the Loan Documents; and a sheriff, referee or auctioneer's fee if such expense has been incurred;

Second: to the satisfaction of all Obligations then outstanding (including those that relate to money advanced hereunder with respect to the Mortgaged Property) other than those set forth in clause First above and in clause Third below;

Third: to the satisfaction of all Obligations then payable under the Cross-Guarantee; and

Fourth: to the payment to whomsoever shall be entitled thereto under applicable Law; provided, however, that if a lock-box is established pursuant to the Loan Agreement, such proceeds shall be applied in accordance with the terms and conditions of the agreement by which such lock-box is established.

(b) If Mortgagee shall be ordered, in connection with any bankruptcy, insolvency or reorganization of Mortgagor, to restore or repay to or for the account of Mortgagor or its creditors any amount theretofore received under this Section, the amount of such restoration or repayment shall be deemed to be an Obligation so as to place Mortgagee in the same position it would have been in had such amount never been received by Mortgagee.

5.5. Additional Security. If Mortgagee at any time shall have a security interest in any property other than the Mortgaged Property securing any of the Obligations, Mortgagee may, to the extent permitted by applicable Laws, enforce the terms of this Mortgage with respect to the Mortgaged Property, at its option, either before, after or concurrently with the exercise of remedies as to such other security or before or after a sale is made of such other security, and may, to the extent permitted by applicable Laws, apply the proceeds derived from any such enforcement to the Obligations without affecting the status of or waiving any right to exhaust all or any other security, including the Mortgaged Property, and without waiving any breach or Event of Default or any right or power whether exercised under the Loan Documents, contained in the Loan Documents or provided for in respect of any such other security.

5.6. Waiver of Right of Redemption and Other Rights. To the extent permitted by applicable Laws, Mortgagor hereby:

(a) expressly waives all benefits that might accrue to the Mortgagor by virtue of any present or future moratorium laws exempting the Mortgaged Property, or any other property, real or personal, or any part of the proceeds arising from any sale of any such property, from attachment,

# UNOFFICIAL COPY

levy, or sale under execution, or providing for any stay of execution to be issued on any judgment recovered on any Loan Document (excepting only any stay of execution) or in any action to foreclose this Mortgage, exemption from civil process, or extension of time for payment;

(b) expressly waives and releases any right to have the Mortgaged Property marshalled;

(c) expressly waives any and all rights of redemption from sale (whether statutory or common law based) under any order or judgment of foreclosure of the lien of this Mortgage on behalf of Mortgagor and each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage and on behalf of any other persons; and

(d) expressly waives any and all rights it may have to require that the Mortgaged Property be sold as separate tracts or units in the event of foreclosure.

5.7. Remedies Cumulative. No remedy conferred upon or reserved to the Mortgagee by this Mortgage, any other security document or any Loan Document is intended to be exclusive of any other remedy provided or permitted by any security agreement, any other Loan Document or by applicable Laws, but each shall be cumulative and shall be in addition to every other remedy so provided or permitted. Every power or remedy given by this Mortgage, any other security document or any other Loan Document to Mortgagee or to which it may be otherwise entitled may be exercised concurrently or independently, from time to time, and as often as may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies.

5.8. Attorney-in-Fact. Upon the occurrence and during the continuance of an Event of Default Mortgagor hereby appoints Mortgagee attorney-in-fact of Mortgagor to take any action and execute any instruments that Mortgagor is obligated, or has covenanted and agreed under the Loan Documents to take or execute, which appointment is irrevocable and coupled with an interest. Mortgagee agrees to notify Mortgagor of any actions taken under this Section 5.8 and, to the extent reasonable and practicable under the circumstances, to afford Mortgagor the opportunity to take such action hereunder.

5.9. Legal Requirements. Mortgagee acknowledges and agrees that all rights and remedies set forth in this Article 5 are in all respects subject to any Law applicable to their exercise.

5.10. Special State Provisions. The provisions of Annex 1 are hereby incorporated by reference herein as though set forth in full herein.

# UNOFFICIAL COPY

## Article 6

### MISCELLANEOUS

6.1. Performance at Mortgagor's Expense. Except as expressly provided herein or in the other Loan Documents to the contrary, no portion of the cost and expense of performing or complying with any of the obligations imposed on Mortgagor by this Mortgage shall be borne by Mortgagee, and no portion of such cost and expense shall be, in any way or to any extent, credited against the aggregate amounts payable by Mortgagor under the Cross-Guarantee or pursuant to any other Loan Document.

6.2. Mortgagee's Right to Perform the Obligations. If Mortgagor shall fail, refuse or neglect to make any payment or to perform any act required of it by this Mortgage or the Cross-Guarantee, then at any time thereafter, without waiving or releasing any other right, remedy or recourse Mortgagee may have because of such failure, refusal or neglect, Mortgagee may (but shall not be obligated to), after five business days' notice to Mortgagor, make such payment or perform such act for the account of and at the expense of Mortgagor. All sums paid by Mortgagee pursuant to this Section and all other sums expended by Mortgagee in respect of which it shall be entitled to indemnity under this Mortgage and the other Loan Documents, together with interest thereon at the Default Rate from the date of such payment or expenditure if such notice is given five business days prior to such payment or expenditure or the date on which such notice is given if such notice is not given five business days prior to such payment or expenditure, shall constitute additions to the Obligations and shall be secured hereby, and Mortgagor covenants and agrees to pay them to the order of Mortgagee promptly upon demand.

6.3. Survival of Obligations. Except as otherwise provided in the Loan Agreement, each and all of the Obligations hereby secured shall survive the execution and delivery of this Mortgage and the other Loan Documents, the foreclosure or other exercise of remedies hereunder and the consummation of the transactions called for therein and herein until the total amount of the Obligations hereby secured shall be satisfied in full.

6.4. Notices. Except as otherwise provided herein, all notices and other communications required under the terms and provisions hereof shall be in writing and shall be delivered by hand or by a nationally recognized overnight courier or registered first-class mail, postage prepaid, return receipt requested, to the parties at the addresses set forth below until such party shall have designated otherwise in a notice given in accordance with this Section:

93727417

# UNOFFICIAL COPY

(a) If to Mortgagee, to:

Value Line Mortgage Corporation  
1916 Westchester Drive  
Silver Spring, Maryland 20902  
Attention: Tamera S. Massey

Kidder Peabody Mortgage Capital Corporation  
60 Broad Street  
New York, New York 10004  
Attention: Seth B. Lipsay

with copies to:

Cleary, Gottlieb, Steen & Hamilton  
One Liberty Plaza  
New York, New York 10006  
Attention: Steven G. Horowitz, Esq.

(b) If to Mortgagor, to:

c/o G. Soros Realty, Inc.  
888 Seventh Avenue  
New York, New York 10106  
Attention: Evan Marks

c/o Reichmann International, L.P.  
520 Madison Avenue  
New York, New York 10022  
Attention: Leonard Chazen

with copies to:

Kaye, Scholer, Fierman, Hays & Handler  
425 Park Avenue  
New York, New York 10022-3598  
Fax No. (212) 836-8689  
Attention: Martin S. Saiman, Esq.

Such notices, requests, approvals, communications and demands shall be deemed given on the date on which a receipt therefor is signed or on the date on which the attempted initial delivery is refused or cannot be made because of a change of address of which the sending party has not been notified.

6.5. No Waiver; Remedies. Mortgagee shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights, remedies or privileges hereunder and no waiver shall be valid unless in writing, signed by Mortgagee, and then only to the extent therein set forth. A waiver by Mortgagee of any right, remedy or privilege hereunder on any one occasion shall not be construed as a bar to any right, remedy or privilege which Mortgagee would otherwise have had on any future occasion. No

93727417

# UNOFFICIAL COPY

6.5. No Waiver, Remedies. Mortgagee shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights, remedies or privileges hereunder and no waiver shall be valid unless in writing, signed by Mortgagee, and then only to the extent therein set forth. A waiver by Mortgagee of any right, remedy or privilege hereunder on any one occasion shall not be construed as a bar to any right, remedy or privilege which Mortgagee would otherwise have had on any future occasion. No

Such notices, requests, approvals, communications and demands shall be deemed given on the date on which a receipt therefor is signed or on the date on which the attempted initial delivery is refused or cannot be made because of a change of address of which the sending party has not been notified.

Kaye, Scholer, Fierman, Hays & Handler  
425 Park Avenue  
New York, New York 10022-3598  
Fax No. (212) 836-8689  
Attention: Martin S. Salzman, Esq.

with copies to:

c/o Reichmann International, L.P.  
520 Madison Avenue  
New York, New York 10022  
Attention: Leonard Chazen

c/o C. Soros Realty, Inc.  
888 Seventh Avenue  
New York, New York 10106  
Attention: Evan Marks

(b) If to Mortgagee, to:

Clary, Gottlieb, Steen & Hamilton  
One Liberty Plaza  
New York, New York 10006  
Attention: Steven G. Horowitz, Esq.

with copies to:

Kidder Peabody Mortgage Capital Corporation  
60 Broad Street  
New York, New York 10004  
Attention: Seth B. Lipsay

(a) If to Mortgagee, to:

Value Line Mortgage Corporation  
1916 Westchester Drive  
Silver Spring, Maryland 20902  
Attention: Tamara S. Massey

93727417



# UNOFFICIAL COPY

failure to exercise nor any delay in exercising on the part of Mortgagee any right, power or privilege hereunder or under the other Loan Documents shall be deemed a waiver of any default or acquiescence therein or shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. All rights and remedies existing hereunder are cumulative and not exclusive of each other and any rights or remedies otherwise available, and Mortgagee's single or partial exercise of any right, remedy, power or privilege hereunder shall not preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

6.6. Covenants Running with the Land. All of the Obligations are intended by the parties to be, and shall be construed as, covenants running with the Mortgaged Property until such Mortgaged Property has been released from the lien of this Mortgage, such covenants being subject in all respects to the provisions of the Loan Agreement pertaining to release of the lien of this Mortgage.

6.7. Further Assurances. Mortgagor shall execute, acknowledge, record and/or file such further statements, documents, agreements, Commercial Code financing and continuation statements and such other instruments and do such further acts as Mortgagee may reasonably request as necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Loan Documents, subject to the Encumbrance of this Mortgage any property intended by the terms hereof or of the other Loan Documents to be subject thereto, including without limitation, any renewals, additions, substitutions, replacements, betterments or appurtenances to the Mortgaged Property. Mortgagee shall be permitted to inspect the Mortgaged Property in accordance with the terms of the Loan Agreement.

6.8. Severability. This Mortgage is intended to be performed in accordance with, and only to the extent permitted by, applicable Laws. If any term or provision of this Mortgage or the application thereof to any circumstance shall, in any jurisdiction and to any extent, be invalid, illegal or unenforceable, such term or such provision shall be ineffective as to such jurisdiction to the extent of such invalidity, illegality or unenforceability without invalidating or rendering unenforceable any remaining terms and provisions hereof or the application of such term or provision to circumstances other than those as to which it is held invalid, illegal or unenforceable.

6.9. Entire Agreement and Modification. This Mortgage and the other Loan Documents constitute the entire agreement among the parties pertaining to the subject matter hereof and thereof and supersede all prior and contemporaneous agreements, understandings, representations or other arrangements, whether express or implied, written or oral, of the parties in connection herewith or therewith except to the extent expressly incorporated or specifically referred to herein or therein. The terms of this

93727417



# UNOFFICIAL COPY

Mortgage shall not be altered, modified, amended or supplemented in any manner except by a written instrument signed by the Mortgagor and Mortgagee.

6.10. GOVERNING LAW. THIS MORTGAGE SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE MORTGAGED PROPERTY IS SITUATED, WITHOUT GIVING EFFECT TO THE CONFLICTS-OF-LAWS RULES AND PRINCIPLES OF SUCH STATE; PROVIDED, HOWEVER, THAT ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICTS-OF-LAWS RULES AND PRINCIPLES THEREOF AS SET FORTH IN THE GOVERNING LAW PROVISION OF THE LOAN AGREEMENT.

6.11. Limitation on Mortgagee's Responsibility. No provision of this Mortgage shall operate to place any obligation or liability for the control, care, management or repair of the Mortgaged Property upon Mortgagee, nor shall it operate to make Mortgagee responsible or liable for any waste committed on the Mortgaged Property by the tenants or any other parties, or for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Mortgagee a "mortgagee in possession" absent the actual taking of possession of the Mortgaged Property by Mortgagee pursuant to Section 15-1701 of the Illinois Mortgage Foreclosure Law.

6.12. Hold Harmless. Mortgagee shall not be obligated to perform or discharge, and undertakes hereby neither to perform nor to discharge, any obligation, duty or liability with respect to the Mortgaged Property or the Leases solely by reason of this Mortgage or the other Loan Documents. Mortgagor shall and does hereby agree to defend, indemnify and hold harmless Mortgagee from and against any and all claims, losses, expenses, damages and liabilities (including, without limitation, all expenses and reasonable fees of attorneys) which may arise or be incurred or accrue in connection therewith or in connection with an obligation of Mortgagor with respect to the Mortgaged Property, except, in each case, to the extent incurred as a result of the gross negligence or willful misfeasance of Mortgagee. Should Mortgagee incur any such claim, loss, expense, damage or liability, the amount thereof, including all expenses and reasonable fees of attorneys and reasonable costs and expenses associated with actions taken by Mortgagee in defense thereof, or otherwise in protecting its interests hereunder, shall constitute additions to the Obligations and shall be secured hereby, and Mortgagor covenants and agrees to pay them to the order of Mortgagee promptly upon demand.

6.13. Marshalling; Payments Set Aside. Mortgagee shall not be under any obligation to marshal any assets in favor of Mortgagor

93727417

# UNOFFICIAL COPY

or any other party or against or in payment of any or all of the Obligations hereby secured. To the extent that Mortgagor makes a payment or payments to Mortgagee or Mortgagee enforces its Encumbrances or exercises any rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or Federal law, common law or equitable cause, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all such Encumbrances and rights and remedies therefor, shall be revived and continue in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

6.14. Waiver of Jury Trial; Consent to Jurisdiction. (a) TO THE EXTENT PERMITTED UNDER APPLICABLE LAWS, MORTGAGOR AND MORTGAGEE EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS MORTGAGE, ANY OTHER LOAN DOCUMENT, OR ANY DEALINGS, CONDUCT, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS BY EITHER OF THEM RELATING TO THE SUBJECT MATTER OF THIS MORTGAGE AND THE LENDER/BORROWER RELATIONSHIP BETWEEN THEM. THE SCOPE OF THIS WAIVER IS INTENDED TO ENCOMPASS ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. MORTGAGOR AND MORTGAGEE EACH ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS MORTGAGE, AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. MORTGAGOR AND MORTGAGEE EACH FURTHER WARRANT AND REPRESENT THAT EACH OF THEM HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH OF THEM KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS MORTGAGE, OR ANY OTHER LOAN DOCUMENTS OR AGREEMENTS RELATING TO THIS MORTGAGE. IN THE EVENT OF LITIGATION, THIS MORTGAGE MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(b) MORTGAGOR AND MORTGAGEE HERETO CONSENT FOR THEMSELVES AND IN RESPECT OF THEIR PROPERTIES, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS IN THE STATE OF NEW YORK WITH RESPECT TO ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING UNDER THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY. MORTGAGOR FURTHER CONSENTS, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS OF THE STATE IN WHICH ANY OF THE COLLATERAL IS LOCATED IN RESPECT OF ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING WITH RESPECT TO SUCH COLLATERAL.

93727417

# UNOFFICIAL COPY

MORTGAGOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, AT THE ADDRESSES SET FORTH IN SECTION 6.4 HEREOF IN CONNECTION WITH ANY OF THE AFORESAID PROCEEDINGS IN ACCORDANCE WITH THE RULES APPLICABLE TO SUCH PROCEEDINGS. MORTGAGOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW HAVE OR HAVE IN THE FUTURE TO THE LAYING OF VENUE IN RESPECT OF ANY OF THE AFORESAID PROCEEDINGS BROUGHT IN THE COURTS REFERRED TO ABOVE AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF MORTGAGEE TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR TO COMMENCE PROCEEDINGS OR OTHERWISE PROCEED AGAINST MORTGAGOR IN ANY JURISDICTION.

6.15. Future Advances. This Mortgage shall secure not only existing indebtedness, but also such future advances, whether such advances are obligatory or are to be made at the option of Mortgagee, or otherwise, as are made by Mortgagee to Mortgagor within twenty years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage. Nothing in this Mortgage shall be deemed an obligation on the part of the Mortgagee to make any further advances.

6.16. Lien Absolute, Multisite Real Estate and Multiple Collateral Transaction. The Mortgagor acknowledges that this Mortgage and a number of other Loan Documents and those documents required by the Loan Documents together secure the Obligations. The Mortgagor agrees that the lien of this Mortgage and all obligations of the Mortgagor hereunder shall be absolute and unconditional and shall not in any manner be affected or impaired by:

(a) any lack of validity or enforceability of the Loan Agreement or any other Loan Document, any agreement with respect to any of the Obligations or any other agreement or instrument relating to any of the foregoing;

(b) any acceptance by the Mortgagee of any security for or guarantees of any of the indebtedness hereby secured;

(c) any failure, neglect or omission on the part of the Mortgagee to realize upon or protect any of the indebtedness hereby secured or any collateral security therefor, including the Loan Documents, or due to any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Mortgagor in respect of the Obligations or this Mortgage (other than the indefeasible payment in full in cash of all the Obligations hereby secured);

(d) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations;

93727417

# UNOFFICIAL COPY

(e) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, nonperfection, renewal, extension, indulgence, alteration, exchange, modification or disposition of any of the indebtedness hereby secured or of any of the collateral security therefor;

(f) any amendment or waiver of or any consent to any departure from the Loan Agreement or any other Loan Documents or of any guaranty thereof, if any, and the Mortgagee may in its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Loan Documents without first exercising or enforcing any of its rights and remedies hereunder; and

(g) any exercise of the rights or remedies of the Mortgagee hereunder or under any or all of the Loan Documents.

The Mortgagor specifically consents and agrees that the Mortgagee may exercise its rights and remedies hereunder and under the other Loan Documents separately or concurrently and in any order that the Mortgagee may deem appropriate.

6.17. Interest Rate Limitation. Notwithstanding anything in this Mortgage or in any other Loan Document to the contrary, if at any time the variable interest rate payable under the Loan Agreement, together with all fees and charges which are treated as interest under applicable Law, including the Default Rate (collectively, the "Charges"), as provided in the Loan Agreement or in any other document executed in connection therewith, or otherwise contracted for, charged, received, taken or reserved by Mortgagee, shall exceed the maximum lawful rate (the "Legal Rate") which may be contracted for, charged, taken, received or reserved by Mortgagee in accordance with applicable Law, the interest rate applicable to this Mortgage and any other Loan Document, together with all Charges payable to Mortgagee, shall be limited to the Legal Rate and any interest or Charges not so limited, taken, received or reserved by Mortgagee at such time shall be spread, prorated or amortized over the term of the Loan Agreement to the fullest extent permitted by Law.

6.18. Non-Recourse Obligations. The obligations of Mortgagor hereunder and the other Loan Documents are limited recourse obligations as set forth in the Loan Agreement.

6.19. Assignees. Mortgagor may not assign its rights and obligations under this Mortgage except as permitted under the Loan Agreement. Mortgagor hereby acknowledges and agrees that Mortgagee may assign this Mortgage to Kidder Peabody Mortgage Capital Corporation. Subject to the foregoing, this Mortgage shall be binding upon, and shall inure to the benefit of,

93727417



# UNOFFICIAL COPY

Mortgagor and Mortgagee and their respective successors and assigns.

6.20. No Merger of Estates. There shall be no merger of the lien, security interest or other estate or interest created by this Mortgage with the fee estate, easement rights, or any other rights or interests in the Mortgaged Property by reason of any such interest created by this Mortgage being held, directly or indirectly, by or for the account of any person who shall own the fee estate or any other interest in the Mortgaged Property. No such merger shall occur unless and until all persons at the time having such concurrent interests shall join in a written instrument expressly specifying such merger, and such instrument shall be duly recorded.

6.21. Subordination; Subrogation. This Mortgage is a second mortgage subject and subordinate to the First Mortgage by Mortgagor in favor of Mortgagee dated as of the date hereof, including any extension, modification, replacement or renewal thereof. If the indebtedness hereby secured or any part thereof, including any amounts advanced by Mortgagee, are used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior Encumbrance upon the Mortgaged Property or any part thereof, then Mortgagee shall be subrogated to such other Encumbrances and to any additional security held by the holder thereof and shall have the benefit of the priority of all of the same, whether or not any such lien, encumbrance or additional security is canceled of record upon such payment or advancement or otherwise, and in addition to the security afforded by this Mortgage and the other Loan Documents.

6.22. Disclosure. Mortgagor hereby agrees that all documentation, financial statements, appraisals and other data, or copies thereof, relevant to Mortgagor or any guarantor of the Obligations secured hereby, or to the Mortgaged Property, may be exhibited to and retained by (i) any bona fide prospective or actual purchaser of the notes secured by the Cross-Guarantee or any interest therein, provided that such purchaser agrees to keep such information confidential or (ii) any title company proposing to issue or issuing a policy of title insurance to Mortgagee in connection with this Mortgage.

6.23. [intentionally omitted]


Note: This Mortgage secures, inter alia, obligations which provide for a variable rate of interest (as described in the Loan Agreement).

93727417

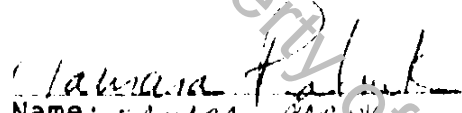
# UNOFFICIAL COPY

IN WITNESS WHEREOF, this Mortgage has been duly executed by the Mortgagor as of the day and year first above written.

Signed and acknowledged in the presence of:

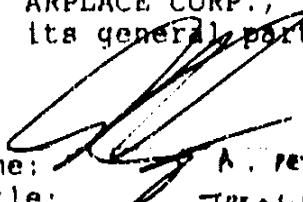
  
Name: ERIC S. ADAMS  
(as to both signatures)

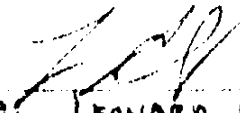
Signed and acknowledged in the presence of:

  
Name: TAMARA BABICH  
(as to both signatures)

ARPLACE LIMITED PARTNERSHIP

By: ARPLACE CORP.,  
its general partner

  
By: \_\_\_\_\_  
Name: A. PETER ANDERSON II  
Title: TREASURER

  
By: \_\_\_\_\_  
Name: LEONARD CHAZEN  
Title: PRESIDENT

Property of Cook County Clerk's Office

93727417





# UNOFFICIAL COPY

STATE OF NEW YORK     )  
                                          ) SS:  
COUNTY OF NEW YORK    )

On this 7 day of September, 1993, before me in the County of New York, a Notary Public in and for said county, personally appeared Leonard Chazen, to me personally known, who, being by me duly sworn did say that he/she is the President of Arplace Corp., the general partner of Arplace Limited Partnership that the seal affixed to said instrument is the seal of said corporation and that the attached was signed and sealed on behalf of the said corporation by authority of its Board of Directors and the said Leonard Chazen acknowledged the execution of the attached to be the free and voluntary act and deed of said corporation on behalf of said partnership.

*Laura Pianter*

Notary Public

[SEAL]

My commission expires:

LAURA PIANTER  
Notary Public, State of New York  
No. 31-4073971  
Qualified in New York County  
Commission Expires 11/5/94

93727417

# UNOFFICIAL COPY

Illinois - Second Mortgage

## ANNEX 1

The following provisions are incorporated by reference into Section 5.10 of the attached Mortgage.

(a) Illinois Responsible Property Transfer Act. Mortgagor represents and warrants to Mortgagee that none of the Mortgaged Property falls within the definition of "real property" set forth in the Illinois Responsible Property Transfer Act of 1988, 735 ILCS 90/1 et seq. and no disclosure statement is required to be filed thereunder as a consequence of any transaction related to this Mortgage.

(b) Waiver of Right of Redemption and Reinstatement; Waiver of Commercial Reasonableness. In addition to the provisions of Section 5.6(c) hereof, Mortgagor hereby voluntarily and knowingly releases and waives any and all rights to retain possession of the Mortgaged Property after the occurrence of an Event of Default hereunder and any and all rights of redemption from judgment, as allowed under Section 15-1601(b) of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.), as amended from time to time ("IMFL"), and any and all rights of reinstatement under Section 15-1602 of IMFL, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in the Mortgaged Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption and reinstatement of Mortgagor and all such other persons are and shall be deemed to be hereby waived to the fullest extent permitted by applicable Law or replacement statute. Mortgagor shall not invoke or use any such Law or Laws or otherwise hinder, delay or impede the execution of any right, power, or remedy herein or otherwise granted or delegated to the Mortgagee, but shall permit the execution of every such right, power, and remedy as though no such Law or Laws had been made or enacted. Mortgagor acknowledges that the Real Property does not contain agricultural real estate, as said term is defined in Section 15-1201 of IMFL, or residential real estate, as said term is defined in Section 15-1219 of IMFL.

(c) Compliance with Illinois Mortgage Foreclosure Law.

(i) If any provision in this Mortgage shall be inconsistent with any provision of IMFL, the provisions of IMFL shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with IMFL.

# UNOFFICIAL COPY

(ii) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under IMFL in the absence of said provision, Mortgagee shall be vested with the rights granted in IMFL to the full extent permitted by Law.

(iii) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Section 6.1 below or in paragraph (h) below, or elsewhere in this Mortgage, shall be added to the Obligations secured by this Mortgage or by the judgment of foreclosure.

(d) Rights of Tenants; Option of Mortgagee to Subordinate. Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of any tenant or tenants of the Mortgaged Property having an interest in the Mortgaged Property prior and superior to that of Mortgagee. The failure to join any such tenant or tenants of the Mortgaged Property as party defendant or defendants in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Obligations secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Property, any statute or rule of Law at any time existing to the contrary notwithstanding. At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all Leases of all or any part of the Real Property upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds in and for the county wherein the Land is located, of a unilateral declaration to that effect.

(e) Relationship of the Mortgagee and Mortgagor. Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any tenant, subtenant, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a "mortgagee in possession" or exercising any rights pursuant to this Mortgage or any of the other Loan Documents.

(f) Subordination of Property Manager's Lien and Real Estate Broker's Lien. Any property management agreement for

# UNOFFICIAL COPY

the Real Property entered into hereafter by Mortgagor with a property manager shall contain a "no lien" provision whereby the property manager waives and releases any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have pursuant to the Illinois Mechanics Lien Act, 770 ILCS 6011 et seq. Such property management agreement or a short form thereof shall, at Mortgagee's request, be recorded with the Recorder of Deeds of the county where the Land is located. In addition, Mortgagor shall cause the property manager to enter into a Subordination of Management Agreement with Mortgagee, in recordable form, whereby the property manager subordinates its present and future lien rights, and those of any party claiming by, through or under the property manager, to the lien of this Mortgage. Any agreement entered into hereafter by Mortgagor or any agent of Mortgagor with any "broker," as defined in the Real Estate License Act of 1983, 225 ILCS 455/1 et seq., for the purpose of selling, leasing or otherwise conveying an interest in the Real Property shall contain a "no lien" provision whereby such broker waives and releases any and all lien rights that such broker or anyone claiming by, through or under such broker may have pursuant to the Commercial Broker Lien Act, 770 ILCS 15/1 et seq. Mortgagor shall cause such broker to enter into a Subordination Agreement with Mortgagee, in recordable form, whereby such broker subordinates its present and future lien rights, and those of any party claiming by, through or under such broker, to the lien of this Mortgage.

(g) Mortgagee's Option Regarding Enforcement of Security Interest in Personal Property. Upon an Event of Default occurring, Mortgagee, as the secured party under Article 3 of this Mortgage, may, at its sole option and in its sole discretion, proceed against the Collateral (as defined in Article 3 of this Mortgage) under Part 5 of the Uniform Commercial Code, 810 ILCS 9-501 et seq., or may, pursuant to 810 ILCS 9-501(4), proceed against both the real property covered by this Mortgage and the Collateral together, in accordance with Mortgagee's rights and remedies under this Mortgage and the other Loan Documents and pursuant to IMFL.

(h) Expenses.

(i) Notwithstanding any provision to the contrary in this Mortgage, Mortgagor shall pay all expenses, charges, costs and fees relating to or necessitated by the terms of this Mortgage or the Cross-Guarantee, including without limitation, Mortgagee's attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of this Mortgage and the Cross-Guarantee, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall



# UNOFFICIAL COPY

not be required to pay any income or franchise taxes of Mortgagee), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage and the Cross-Guarantee. Mortgagor recognizes that, during the term of this Mortgage, Mortgagee:

(A) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Mortgagee shall be a party by reason of the Loan Documents or in which the Loan Documents or the Mortgaged Property, or any portion thereof, are involved directly or indirectly;

(B) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(C) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Mortgagee's taking possession of and managing the Mortgaged Property, which event may or may not actually occur;

(D) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(E) May enter into negotiations with Mortgagor or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Mortgaged Property, the assumption of liability for any of the Obligations secured hereby or the transfer of the Mortgaged Property in lieu of foreclosure; or

(F) May enter into negotiations with Mortgagor or any of its agents, employees or attorneys pertaining to Mortgagee's approval of actions taken or proposed to be taken by Mortgagor which approval is required by the terms of this Mortgage.

(ii) All expenses, charges, costs and fees described in this paragraph (h) shall be so much additional indebtedness secured hereby, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Mortgagor forthwith upon demand.

# UNOFFICIAL COPY

(j) Consent to Appointment of Receiver. Without limiting the generality of any other provisions of this Mortgage, the Mortgagor hereby and in accordance with the provisions of Sections 15-1701, 1702 and 1703 of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1701, 1702 and 1703, expressly authorizes and consents to the placing of the mortgage in possession and the appointment of a receiver in the manner permitted thereunder.

(k) Use of Proceeds. Mortgagor hereby represents and agrees that the proceeds of the loans guaranteed by the Cross-Guarantee secured by this Mortgage shall be used for business purposes and that the indebtedness secured hereby constitutes a business loan.

Property of Cook County Clerk's Office

# UNOFFICIAL COPY EXHIBIT A

RE NUMBER 12613  
200 ARLINGTON PLACE  
ARLINGTON HEIGHTS, ILLINOIS

## PARCEL A:

Lots 1 through 8, inclusive, in block 20 in the town of Dunton (now known as Arlington Heights), being a subdivision of the West Half of the Southwest Quarter of Section 29, Township 42 North, Range 11 East of the Third Principal Meridian, excepting therefrom that part of said Lots 5 and 6 in Block 20, lying Southwesterly of a straight line drawn from a point on the South line of said Lot 5, 138.33 feet, as measured along the South line of Lots 4 and 5 in said Block 20, West of the Southeast corner of Lot 4 in said Block 20, to a point on the West line of said Lot 6, 138.55 feet, as measured along the West line of Lots 6, 7, and 8 in said Block 20, South of the Northwest corner of Lot 8 in said Block 20, all in Cook County, Illinois.

Together with an easement, right and privilege appurtenant to and for the benefit of Parcel A created by Declaration and Agreement of Parking Easement and rights pertaining to Skybridge (the "parking easement") recorded December 22, 1986 as Document 86612910 and filed December 22, 1986 as Document LR3578048 and burdening the property (the "burdened property") described as follows:

Lots 1 through 8 in Block 13 in the Town of Dunton, now known as Arlington Heights, being a Subdivision of the West Half of the Southwest Quarter of Section 29, Township 42 North, Range 11 East of the Third Principal Meridian in Cook County, Illinois, excluding that part of Lot 1 in Block 13 in the Town of Dunton as follows:

Beginning at the Northeast corner of said Lot 1; THENCE South 00 degrees 17 minutes 57 seconds West along the East line of said Lot 1, 10.0 feet to a 2 inch disc; THENCE North 44 degrees 37 minutes 26 seconds West 14.16 feet to a 2 inch disc on the North line of said Lot 1, 10.0 feet West of the Northeast corner thereof; THENCE South 89 degrees 32 minutes 48 seconds East along the North line of said Lot 1, 10.0 feet to the POINT OF BEGINNING, in Cook County, Illinois, for the purpose of

(1) 367 parking spaces to be allocated and specifically designated for the use of grantee, its successors and assigns, its invitees and guests, and the residential and commercial tenants of Parcel A and their guests and invitees,

(2) Rights of reasonable ingress and egress from public streets to and from the garage facility to be constructed on the burdened

93727417

# UNOFFICIAL COPY

property and through the garage facility and to and from the aforesaid parking spaces.

(3) Connection of a Skybridge from Parcel A to the garage facility to be constructed on the burdened property and adequate ingress and egress and access to such Skybridge by tenants (both residential and commercial) of Parcel A, their invitees and guests and the grantee, its successors and assigns, its invitees and guests over, across and upon the burdened property and the garage facility to be erected thereon,

(4) The air rights situated above Miner Street between Evergreen Avenue and Arlington Heights Road, Arlington Heights, Illinois described as follows:

All of the area from and above Miner Street lying between Evergreen Avenue and Arlington Heights Road, Arlington Heights, Illinois as may be applicable for the construction, operation, and maintenance of the Skybridge described in the Declaration and Agreement of Parking Easement and rights pertaining to Skybridge, for the purpose of the construction, operation and maintenance of the aforesaid Skybridge, and

(5) Adequate access to the garage facility to be constructed on the burdened property for purposes of maintaining, servicing and repairing the aforesaid parking spaces and Skybridge, in Cook County, Illinois.

## PARCEL B:

Lots 1, 2, 5, 6, 7 and 8 in Block 14 in the Town of Dunton, a Subdivision of the West Half of the Southwest Quarter of Section 29, Township 42 North, Range 11 East of the Third Principal Meridian in Cook County, Illinois

Together with an easement, right and privilege appurtenant to and for the benefit of Parcel B created by Declaration and Agreement of Parking Easement and rights pertaining to Skybridge (the "parking easement") recorded December 22, 1986 as Document 86612910 and filed December 22, 1986 as Document LR3578048 and burdening the property (the "burdened property") described as follows:

Lots 1 through 8 in Block 13 in the Town of Dunton, now known as Arlington Heights, being a Subdivision of the West Half of the Southwest Quarter of Section 29, Township 42 North, Range 11, East of the Third Principal Meridian, in Cook County, Illinois, excluding that part of Lot 1 in Block 13 in the Town of Dunton as follows:

Beginning at the Northeast corner of said Lot 1; THENCE South 00 degrees 17 minutes 57 seconds West along the East line of said Lot 1, 10.0 feet to a 2 inch disc; THENCE North 44 degrees 37 minutes 26 seconds West 14.16 feet to a 2 inch disc on the North

# UNOFFICIAL COPY

line of said Lot 1, 10.0 feet West of the Northeast corner thereof; THENCE South 89 degrees 32 minutes 48 seconds East along the North line of said Lot 1, 10.0 feet to the POINT OF BEGINNING, in Cook County, Illinois, for the purposes of

(1) 183 parking spaces to be allocated and specifically designated parking spaces for the use of grantee, its successors and assigns, its invitees and guests, and the residential and commercial tenants of Parcel B and their guests and invitees,

(2) Rights of reasonable ingress and egress from public streets to and from the garage facility to be constructed on the burdened property and through the garage facility and to and from the aforesaid parking spaces,

(3) Connection of a Skybridge from Parcel A to the garage facility to be constructed on the burdened property and adequate ingress and egress and access to such Skybridge by tenants (both residential and commercial of Parcel B, their invitees and guests and the grantee, its successors and assigns, its invitees and guests over, across and upon the burdened property and the garage facility to be erected thereon,

(4) The air rights situated above Miner Street between Evergreen Avenue and Arlington Heights Road, Arlington Heights, Illinois described as follows:

All of the area from and above Miner Street lying between Evergreen Avenue and Arlington Heights Road, Arlington Heights, Illinois as may be applicable for the construction, operation, and maintenance of the Skybridge described in the Declaration and Agreement of Parking Easement and Rights pertaining to Skybridge, for the purpose of the construction, operation and maintenance of the aforesaid Skybridge, and

(5) Adequate access to the garage facility to be constructed on the burdened property for purposes of maintaining, servicing and repairing the aforesaid parking spaces and Skybridge, in Cook County, Illinois.