

UNOFFICIAL COPY

LANDLORD'S AGREEMENT CONSENT AND WAIVER

89016465

THIS LANDLORD'S AGREEMENT (this "Agreement"), executed and delivered as of this 1st day of November, 1988, by Chicago Title & Trust Company, not personally, but as Trustee under Trust Agreement dated December 19, 1986, and known as Trust No. 1089390 ("Landlord", "Owner"), in favor of Capitol Bank and Trust, 4801 W. Fullerton, Chicago, Illinois 60639 ("Lender").

W I T N E S S E T H

71-83-173 DIVI

WHEREAS, Chicago Title & Trust Company, not personally, but as Trustee under Trust Agreement dated December 19, 1986, and known as Trust No. 1089390, is the record fee simple owner of the real estate described in Exhibit "A" attached hereto and by this reference made a part hereof, (said real estate being hereinafter called the "Premises") which premises is divided into Lots 11 through 17 and are located generally at 223-225 W. Ontario Street, Chicago, Cook County, Illinois, hereinafter "Owner" or "Landlord" of the "Principal Lease."

WHEREAS, 223 West Ontario Corporation, is the Lessee of the real estate described in Exhibit A and described in paragraph A above, pursuant to Lease dated November 5, 1985, a copy of which is attached hereto as Exhibit "B" and incorporated herein. The Lessee has sub-leased the premises pursuant to Sub-Lease Agreement dated April 25, 1986, hereinafter referred to as "Lessee."

WHEREAS, 223 W. Ontario Associates, Ltd., an Illinois Limited Partnership, is the Sub-Lessee of the real estate described in Exhibit "A", pursuant to a Sub-Lease Agreement dated April 25, 1986, a copy of which is attached hereto as Exhibit "C" and incorporated herein, hereinafter referred to as "Borrower" or "Sub-Lessee".

WHEREAS, Lender and Borrower have entered, and may from time to time hereafter enter, into various agreements, including a construction loan agreement, a copy of which is attached as Exhibit D, instruments and documents (collectively the "Loan Agreements") providing for Lender to loan and/or advance monies to or for the benefit of Borrower.

WHEREAS, to secure payment and performance of all of Borrower's obligations and liabilities to Lender under the Loan Agreements or other security agreement ("Borrower's Liabilities"), Borrower has granted to Lender a leasehold mortgage and a first priority security interest (a) in the right to use and occupy the Premises, including the buildings and improvements, in accordance with the terms and conditions of the Principal Lease, and (b) on all of Borrower's chattels, furniture, furnishings, equipment, inventory, and other personal property to be used in the operation of the Premises, ("Collateral") located on the Premises;

WHEREAS, Landlord wishes to continue to lease the Premises to Lessor, who has sub-let to Borrower and receive rental payments therefor pursuant to the Lease, and accordingly wishes for Borrower to remain in business and continue to operate the same; and

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WHEREAS, Borrower, to remain in business and continue to operate the same, may require loans and/or advances from Lender pursuant to the Loan Agreements, and Lender, as a condition precedent to making such loans and/or advances, has required Landlord to execute and deliver this Agreement;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord hereby covenants and agrees with Lender as follows:

1. Provided and as long as Lessee or its successors in interest is not in default under the Principal Lease, Landlord waives each and every right which Landlord now has or hereafter may have, under the laws of the State of Illinois, or by virtue of the Lease or Sub-Lease, or any renewals, extensions, amendments, modifications, substitutions or replacements thereof ("New Lease") or by virtue of Borrower's occupation of the Premises, to levy or distrain upon, for rent, in arrears, in advance or both or for any monetary obligation arising by reason of default under the Lease or any New Lease or Sub-Lease, or to claim or assert any lien, right, claim or title to any or all of the Collateral, which now or hereafter may be, or be installed, on said Premises.

2. Landlord agrees that the Collateral (i) is and shall remain personal property notwithstanding the manner or mode of the attachment of any item of Collateral to the Premises (Except for all buildings and improvements, including, but not limited to lights, heating, plumbing, air conditioning, ventilating systems, and components of such systems), and (ii) is not and shall not become or be deemed to be fixtures. Notwithstanding the fact that the buildings and improvements are not personal property, the Lender has a first priority security interest in the right to use and occupy the Premises, including any buildings and improvements in accordance with the terms of the Principal Lease.

3. Landlord recognizes and acknowledges that Lender's security interest in the Collateral pursuant to the Loan Agreements, is superior to any lien, right or claim or title of any nature which Landlord now has or hereafter may have or assert in or to the Collateral by law, statute, the Lease, Sub-Lease, any New Lease, other agreement or otherwise, all provided and only so long as Lessee or its successors in interest is not in default in the Principal Lease.

4. Landlord will notify Lender in writing, at its principal place of business set forth above, if Lessee defaults on its obligations under the Lease, Sub-Lease, or any New Lease and will allow Lender 30 days from the receipt of notice in which to cure or cause Lessee to cure any such defaults. If the Principal Lease is in fact terminated, the Lender, or its nominee, shall be given the option to reinstate the Principal Lease for the remainder of the period of the term upon curing all existing defaults within the aforesaid 30 day period. The Lender hereby also shall be allowed to exercise any extension or option of renewal or other option not exercised by the Lessee, provided Lender shall exercise any such extension or option within the time periods provided for in the Principal Lease. Notice shall be sent by certified mail, return receipt requested, addressed to Lender.

5. In the event of default by Lessee in the payment or performance of any of Lessee's liabilities, provided Lender may do so without damage to

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EXHIBIT
A

Sub-Leasehold Estate created by sublease agreement from 223 West Ontario Corporation, a corporation of Illinois, as Lessor to 223 West Ontario Associates, Ltd., an Illinois Limited Partnership, as Lessee, dated April 25, 1986, a Memorandum of which sublease agreement was recorded July 21, 1986, as document 86306970 and filed July 21, 1986 as document LR 3532746, which lease demises the following described land for a term of years beginning January 27, 1986 and ending 20 years from aforesaid date to wit:

Lots 11 to 17 both inclusive, in Block 14 in Newberry's addition a subdivision in the East 1/2 of the West 1/2 of the North East 1/4 of Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Tax # 17-09-230-005-0000 affects Lot 11
17-09-230-004-0000 affects Lots 12 and 13
- 17-09-230-003-0000 affects Lot 14
17-09-230-002-0000 affects Lot 15
17-09-230-001-0000 affects Lots 16 and 17

Address: 223-225 W. Ontario
Chicago, IL 60610

Cook County Clerk's Office
86306970

033 W. Drake

and the unrecorded lease, the unrecorded lease shall control.
lease provisions. In the event of conflict between the memorandum
Provisions in the memorandum shall not be used in interpreting the
This memorandum is not a complete summary of the lease.
unrecorded lease.

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The term of this lease is to commence January 27, 1986 and
will run for a term of twenty (20) years, subject to Lessee's options
to extend the term for twenty (20) additional years, as stated in the
lease is incorporated in this memorandum by this reference.

86306969

For good and valuable consideration, Lessor leases the
premises, together with all improvements, to Lessee, and Lessee
hires the same from Lessor, for the term and under the provisions
contained in the above-mentioned unrecorded lease, which unrecorded

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1015 002
1014 003
1013 004
1012 005
1011 006

lots 11, 12, 13, 14, 15, 16 and 17 in Block 14 17-09-001
in Newberry's Addition, a subdivision in the
East 1/2 of the West 1/2 of the Northeast 1/4
of Section 9, Township 39 North, Range 14, East
of the Third Principal Meridian, in Cook County,
Illinois
"Lessee"), concerning the premises legally described as follows:
(hereinafter referred to as "Lessor"), and 223 WEST ONTARIO
CORPORATION, an Illinois Corporation, (hereinafter referred to as
dated November 5, 1985 and amended November 5, 1985 and January 27,
1986 between FAUCHER BROS. CARTAGE, INC., an Illinois corporation,
This is the memorandum of that certain unrecorded lease

MEMORANDUM OF LEASE

70-38-08 & 03

My Commission expires: 5/1/88

GIVEN under my hand and seal this 27th day of January, 1986.

[Signature]
Notary Public

59191068

forth.

ded of said corporation, for the uses and purposes therein set
their free and voluntary act, and as the free and voluntary act and
to authority, given by the Board of Directors of said corporation as

corporate seal of said corporation to be affixed thereto, pursuant
ment as President and Secretary of said corporation, and caused the
President and Secretary, they signed and delivered the said instru-

before me this day in person and severally acknowledged that as such
whose names are subscribed to the foregoing instrument, appeared

of said corporation and personally known to me to be the same persons
Inc., and Donna M. Faucher, personally known to me to be the Secretary
personally known to me to be the President of Faucher Bros. Cartage,

and state aforesaid, do hereby certify that Mary F. Faucher,

I, the undersigned, a Notary Public in and for the County

STATE OF ILLINOIS)
) SS.)
COUNTY OF COOK)

ATTEST:

[Signature]

By: *[Signature]*
President

FAUCHER BROS. CARTAGE, INC.

Memorandum of Lease on January 27, 1986 at Chicago, Illinois.

IN WITNESS WHEREOF, the parties have executed this

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My Commission expires: 7/30/87 5 0 1 2 3 4 5

James M. Miller
Notary Public

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86306969

GIVEN under my hand and seal this 27th day of January, 1986.

purposes therein set forth.

and voluntary act and deed of said corporation, for the uses and

of said corporation as their free and voluntary act, and as the free

affixed thereto, pursuant to authority, given by the Board of Directors

corporation, and caused the corporate seal of said corporation to be

delivered the said instrument as President and Secretary of said

acknowledged that as such President and Secretary, they signed and

instrument, appeared before me this day in person and severally

me to be the same persons whose names are subscribed to the foregoing

me to be the Secretary of said corporation and personally known to

CORPORATION, and JAMES BITTENBERG, personally known to

personally known to me to be the President of 223 WEST ONTARIO

and state aforesaid, do hereby certify that JAMES BITTENBERG

I, the undersigned, a Notary Public in and for the County

STATE OF ILLINOIS)
) SS.
) COUNTY OF COOK)

By: James M. Miller
President

ATTEST: James M. Miller

223 WEST ONTARIO CORPORATION

Memorandum of Lease on January 27, 1986 at Chicago, Illinois.

IN WITNESS WHEREOF, the parties have executed this

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W. W. Carter

this reference.

Sublease, which Sublease is incorporated in this Memorandum by Lessor, for the term and under the provisions contained in the subleases the Property with the exclusion stated above from to Lessor, together with all improvements, to Lessee, and Lessee the existing buildings on the Property, which rights are reserved any space in or any rights associated with the air rights above dedicate, lease, grant a license of or easement over or develop Property, excluding therefrom the right to use, build in, For good and valuable consideration, Lessor subleases the

desires to sublease a portion of the Property from Lessor. Property leased to Lessor by the underlying Lessor and Lessee Lessor desires to sublease to Lessee a portion of the legally described in Exhibit A (the "Property"). Inc., as Lessor (the "Underlying Lessor"), for the property (the "Underlying Lease") as Lessee, with Faucher Bros. Cartage, Lessor entered into a Lease Agreement dated November 5, 1985

W I T N E S S E T H :

limited partnership ("Lessee"). tion ("Lessor"), and 223 W. Ontario Associates, Ltd., an Illinois by and between 223 West Ontario Corporation, an Illinois corpora- unrecorded Sublease Agreement dated April 25, 1986 ("Sublease"), This is the Memorandum dated April 25, 1986 of that certain

MEMORANDUM OF SUBLEASE

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id 0036P Exhibit C

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70-34-1921 D 5

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Witnesses as to Lessor: *[Signature]*

BY: *[Signature]*
223 West Ontario Corporation

of Sublease on the date first above written at Chicago, Illinois.

IN WITNESS WHEREOF, the parties have executed this Memorandum
Memorandum and the Sublease, the Sublease shall control
the Sublease provisions. In the event of conflict between the
provisions in the Memorandum shall not be used in interpreting
This Memorandum is not a complete summary of the Sublease.
Lessor to Lessee.

the Sublease were originally made directly from the underlying
the term of the Sublease with the same force and effect as though
complete attornment to the underlying Lessor for the balance of
not be cancelled or terminated, but Lessee shall make full and
voluntary, involuntarily or by operation of law, the Sublease shall
accordance with its terms or by the surrender thereof, whether
If the underlying Lease is cancelled or terminated in
the Sublease.

only exercise each such renewal option if it is not in default of
lease for a term of five (5) years each; provided, Lessee may
Lessee is granted four (4) options of renewal of the sub-
unless sooner terminated, as stated in the Sublease.
January 27, 1986 and ending on the last day of the two hundred
fortieth (240) complete calendar month following commencement,
The term of the sublease is twenty (20) years commencing

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Property of Cook County Clerk's Office

223 W. Ontario Associates, Ltd., an Illinois Limited Partnership

By: DPS, Inc.

By: Gene Pontillo Enterprises, Ltd.

By: D&V Ventures, Inc.

By: [Signature]

Attest:

Secretary

[Signature]

Attest:

Secretary

[Signature]

Attest:

Attest:

[Signature]

Secretary

Witnesses as to Lessee:

[Signatures]

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89016165

My Commission expires: Sept. 6, 1987

Karen W. Gorton
NOTARY PUBLIC

1986.

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Laws Kimberling personally known to me to be the President of 223 WEST ONTARIO CORPORATION, and Tamer Kimberling, personally known to me to be the Secretary of said corporation and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary, they signed and delivered the said instrument as President and Secretary of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority, given by the Board of Directors of said corporation as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and seal this 23rd day of May.

STATE OF ILLINOIS)
) COUNTY OF COOK)
) SS.)

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Property of Cook County Clerk's Office

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My Commission expires: Sept. 6, 1987

NOTARY PUBLIC

Maureen M. Gohr

1986.

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that GEORGE S. HARRIS personally known to me to be the President of DPS, INC., and personally known to me to be the Secretary of said corporation which is a general partner of 223 W. ONTARIO ASSOCIATES, LTD., and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary, they signed and delivered the said instrument as President and Secretary of said corporation on behalf of the corporation as general partner of 223 W. ONTARIO ASSOCIATES, LTD., and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority, given by the Board of Directors of said corporation as their free and voluntary act, and as the free and voluntary act and deed of said corporation as general partner of 223 W. ONTARIO ASSOCIATES, LTD. and as the free and voluntary act and deed of 223 W. ONTARIO ASSOCIATES, LTD., for the uses and purposes therein set forth. GIVEN under my hand and seal this 23rd day of May

STATE OF ILLINOIS

COUNTY OF COOK)
SS.)

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My Commission expires: Nov. 6, 1987

NOTARY PUBLIC

Kevin W. John

1986.

GIVEN under my hand and seal this 23rd day of May

purposes therein set forth.

deed of 223 W. ONTARIO ASSOCIATES, LTD., for the uses and
 ONTARIO ASSOCIATES, LTD. and as the free and voluntary act and
 act and deed of said corporation as general partner of 223 W.
 as their free and voluntary act, and as the free and voluntary
 to authority, given by the Board of Directors of said corporation
 corporate seal of said corporation to be affixed thereto, pursuant
 eral partner of 223 W. ONTARIO ASSOCIATES, LTD., and caused the
 Secretary of said corporation on behalf of the corporation as gen-
 they signed and delivered the said instrument as President and
 severally acknowledged that as such President and Secretary,
 foregoing instrument, appeared before me this day in person and
 to me to be the same persons whose names are subscribed to the
 partner of 223 W. ONTARIO ASSOCIATES, LTD. and personally known
 me to be the Secretary of said corporation which is a general
 ENTERPRISES, LTD., and Gene Pontillo personally known to
 personally known to me to be the President of GENE PONTILLO
 County and State aforesaid, do hereby certify that Gene Pontillo
 I, the undersigned, a Notary Public in and for the

STATE OF ILLINOIS)
)
) SS.)
)
) COUNTY OF COOK)

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Property of Cook County Clerk's Office

My Commission expires: July 8, 1982

NOTARY PUBLIC

1986

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Mike D. Itka personally known to me to be the President of D&V VENTURES, INC., and Terina R. Wisel personally known to me to be the Secretary of said corporation which is a general partner of 223 W. ONTARIO ASSOCIATES, LTD. and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary, they signed and delivered the said instrument as President and Secretary of said corporation on behalf of the corporation as general partner of 223 W. ONTARIO ASSOCIATES, LTD., and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority, given by the Board of Directors of said corporation as their free and voluntary act, and as the free and voluntary act and deed of said corporation, and as general partner of 223 W. ONTARIO ASSOCIATES, LTD. and as the free and voluntary act and deed of 223 W. ONTARIO ASSOCIATES, LTD., for the uses and purposes therein set forth.

GIVEN under my hand and seal this 23rd day of May

STATE OF ILLINOIS)
)
) SS.
)
) COUNTY OF COOK

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Property of Cook County Clerk's Office

17-09-230-002 6015
17-09-230-003 6014
17-09-230-001 6016 and 17
17-09-230-004 6015 12 and 13
17-09-230-005 6011

DCI N

Lots 11, 12, 13, 14, 15, 16 and 17 in Block 14
in Newberry's Addition, a subdivision in the
East 1/2 of the West 1/2 of the Northeast 1/4
of Section 9, Township 39 North, Range 14, East
of the Third Principal Meridian, in Cook County,
Illinois. SEC. 97C

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This Project is to be constructed in accordance with Plans and Specifications prepared by a properly licensed and registered architect, which Plans are to be submitted to and approved by the Lender, it requested by Lender. The General Contractor for the construction of the building shall be designated by the Borrower, subject to the consent of the Lender, which consent shall not be unreasonably withheld. The Project will be constructed and equipped under the terms of one or more prime contracts (the "Prime Contracts") with responsible contractors, subcontractors and materialmen who will construct this Project under the terms thereof, which Prime Contracts are also to be submitted for the reasonable approval of the Lender, it requested by the Lender, and will, if the Lender requests, be assigned to the Lender as additional security for the payment of the loan contemplated hereunder.

D. Borrower proposes to construct a 15,000 square foot extension on an existing restaurant. The extension, which is the project of this Construction Agreement, is being built on lots 15, 16, and 17, and will be more commonly known as 225 W. Ontario, Chicago, Illinois, 60610 (hereinafter called the "project"). Borrower will cause the work to be completed on or before April 30, 1989. (See Exhibit "A" for legal description of all lots on which collateral is located.)

C. 223 W. Ontario Associates, Ltd., an Illinois limited partnership, is the Sub-Lessor of the real estate described in Exhibit "A", pursuant to a Sub-Lease Agreement dated April 25, 1986, a copy of which is attached hereto as Exhibit "C" and incorporated herein, hereinafter referred to as "Borrower" or "Lessee".

B. 223 West Ontario Corporation, is the Lessee of the real estate described in Exhibit A and described in paragraph A above, pursuant to Lease dated November 5, 1985, a copy of which is attached hereto as Exhibit "B" and incorporated herein. The Lessee has sub-leased the premises pursuant to Sub-Lease Agreement dated April 25, 1986, hereinafter referred to as "Lessor".

A. Chicago Title & Trust Company, not personally, but as Trustee under Trust Agreement dated December 19, 1986, and known as Trust No. 1089390, is the record fee simple owner of the real estate described in Exhibit "A" attached hereto and by this reference made a part hereof, (said real estate being hereinafter called the "Premises") which premises is divided into lots 11 through 17 and are located generally at 223-225 W. Ontario Street, Chicago, Cook County, Illinois, hereinafter "Owner."

RECITALS:

THIS AGREEMENT, made as of November 1, 1988, by and between 223 W. Ontario Associates, Ltd., an Illinois limited partnership, hereinafter called the "Borrower(s)", Capital Bank & Trust, hereinafter called the "Lender" or "Bank", and 223 West Ontario Corporation, an Illinois corporation, hereinafter called the "Lessor."

Construction Loan and Security Agreement

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Erkurt D

4. NOTE: COLLATERAL FOR OBLIGATIONS; GUARANTIES; CORPORATE DOCUMENTS

B. On the terms and conditions herein set forth, the Lender agrees to lend to Borrower, from time to time, such sums as may be requested by Borrower, the aggregate of which shall not exceed \$1,500,000.00. Said funds shall be loaned for the purposes and subject to all the terms and provisions contained in this Agreement.

A. Borrower acknowledges that the loan to be made hereunder is intended to be made by the Lender as construction interim financing in reliance upon the representations herein contained, and in anticipation of the prompt and faithful performance by Borrower. That the term of said loan will be for six (6) months, unless extended by written agreement.

3. TERM; INTERIM FINANCING.

C. The foregoing representations and warranties, as well as the actual representations, will be true at the date of the first disbursement and at the dates of all subsequent disbursements of the loan proceeds except for the necessary effect of the transactions contemplated by this Agreement.

B. The Project does not now, and when completed, will not then violate any applicable zoning or building law or ordinance or any covenants or restrictions of record.

A. The Borrower will have, in form acceptable to the Lender, a valid sub-lease to the Premises as of the date of the first disbursement hereunder, and will provide to Lender, escrowed certificates from the Lessor and Owner as are provided for in the Sub-Lease.

2. BORROWER(S) REPRESENTATIONS FOR INITIAL DISBURSEMENT. Borrower further represents, warrants and agrees as follows:

1. REPRESENTATIONS. The foregoing recitals are hereby made a part hereof and constitute representations and agreements of Borrower(s).

HEREFORE, in consideration of the foregoing and of the mutual covenants conditions and agreements herein contained, the parties hereto agree as follows:

F. Borrower shall not be required to maintain any compensating balances with Lender during the terms of the Construction Loan. However, in the event the loan is renewed as a term obligation ("end loan"), then compensating balances will be required.

E. Borrower desires to arrange interim financing for the purpose of defraying a portion of the cost of the construction and equipping of this Project and has applied to the Lender for an interim construction loan for such purposes in an amount not to exceed (\$1,500,000.00), which loan the Lender is willing to make upon the terms and conditions hereinafter set forth. Borrower agrees to pay the Lender a minimum non-refundable loan service fee of one-half percent (.50%) of the loan amount, payable at the time of the first draw or advance. At the option of Lender the fee may be deducted from the loan proceeds at the time of the first loan disbursement.

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A. Borrower(s) expressly agree(s) to complete construction of the project, in accordance with the approved plans and specifications, by April 30, 1989, or by such later date as may be agreed upon by the lender. In addition, Borrower(s) further agree(s) to keep the premises free and clear of all liens for charges of labor, materials, supplies or services; pay, before they become delinquent, all taxes and assessments accruing thereon, and provide access by the lender, and permit the lender, to apply, duly authorized agents to the premises at all times during working hours. Borrower(s) further agree(s) not to amend, modify, revoke, supplement or terminate the permanent commitment, if any, the Take-Out Agreement, if any, partnership or joint venture agreement, and trust or corporation, to this project or any approved space lease, without the prior written consent of the lender.

5. BORROWER(S) AGREES TO PROMPTLY:

D. Deliver to the lender such certified copies of documents, agreements, resolutions, certificates, partnership or joint venture agreements, articles of incorporation, certificates of good standing, Borrower(s) copies of articles of incorporation, etc., as may be necessary, in the lender's judgment, to authorize and support the execution and delivery of all documents contemplated by this loan.

C. Cause the execution and delivery to the lender, an additional security for the payment of all funds advanced pursuant to this Agreement, an additional mortgage or interest in real property, and of all contents thereof, premises, whether heretofore or hereafter made, and of all contents thereof, whether due or to become due, in form satisfactory to the lender and the Lender's Agreement (Contract) and subject to certification. The assignment of rents (s) and (a) shall, if the lender so requests, be acknowledged by the contract in question.

2. Security Interest shall mean any lien, encumbrance, or security interest of any kind whatsoever, whether arising under a Security Instrument or as a matter of law, judicial process, or otherwise.

1. "Security Instrument" shall mean any security agreement, amendment thereto, financing statement, continuation statement, chattel mortgage note, assignment, pledge agreement, or other agreement providing for, evidencing, or perfecting any security interest.

B. Execute and deliver to the lender a chattel mortgage and other security instruments or security agreement creating a first priority security interest (a) in the right to use and occupy the premises, including the buildings and improvements, in accordance with the terms and conditions of the principal lease, and (b) on all of Borrower's, partners', furniture, furnishings, equipment, inventory, and other personal property to be used in the operation of the premises, (the "Security Agreement"), together with appropriate financing statements under the Uniform Commercial Code, all in form and content satisfactory to the lender.

A. Execute and deliver to the lender its installment note in the principal amount of \$1,500,000.00 (the "Note"), payable to the order of the lender, to bear interest at 18 over Capital Bank and Trust's base rate, which is a floating variable interest rate.

Borrower agrees to promptly:

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8. The obligation of the lender to make the initial advance (and, where indicated, any subsequent advance) on account of the aggregate loan provided for hereunder, is subject to the continuing accuracy of all representations and warranties herein contained and to the performance of the following further conditions:

(1) Costs of Project. Borrower(s) shall furnish the lender upon lender's Request with an analysis ("Project Cost Analysis") in such detail as may be requested by the lender, and satisfactory to the lender, showing, among other matters, (1) the cost of the project (and the amounts expended by Borrower therefore) to a date which shall not be earlier than 15 days prior to the date of the initial advance; (2) aggregate estimated accruals until completion of the project of real estate taxes and interest; (3) the amount of estimated expenditures for each of the branches or classifications of work set forth in the schedule to be attached to such statement; (4) license and permit fees, or any fees, and fees for distributing this loan; (5) architect and engineer fees, with respect to sidewalks, streets, parking, driveways and utilities; (7) and by loan and title guarantee charges; (8) a contingency fund; and (9) any or all other expenses and costs in connection with the acquisition of the land/or the rental thereof. Notwithstanding the above, the construction project budget shall not exceed the loan amount, unless agreed to in writing by lender.

(2) Revised Costs. At the time of each advance subsequent to the initial advance, Borrower shall furnish the lender with a revised Project Cost Analysis, in connection with the lender, showing changes in, or variations from, or additions to the Project Cost Analysis originally submitted. The title company shall issue a pending disbursement endorsement, without new or different title exceptions noted, in the aggregate amount of all advances (including the proposed advance).

(3) Subcontractors, Contracts. The general contractor shall have entered into prime contracts, in form reasonably satisfactory to the lender, covering substantially all of the work, services and materials required for the construction of the project in accordance with plans and specifications first approved by the lender, and, except to the extent waived by the lender, the general contractor shall have furnished a performance bond and a labor and material bond in forms satisfactory to the lender, naming the lender as insured thereon, in an amount equal to 100% of the total cost of constructing the project. Alternatively, each prime contractor or subcontractor shall have furnished the lender with similar bonds, each in an amount equal to 100% of the total amount of each prime contract, including all revisions thereof.

(4) Title Insurance. Borrower shall have furnished to the lender an American Land Title Association Standard Loan Policy (Revised Coverage), insuring the lender against loss or damage by reason of defects in title protected by said policy, or a commitment indicating its willingness to issue such policy, issued by a title guarantee company satisfactory to the lender in the amount of \$1,500,000.00, guaranteeing, as of a date not earlier than one day prior to the initial advance, the chain of title or leasehold mortgage to be a first lien on the sub-leasehold estate, subject only to current general real estate taxes not delinquent; zoning and building laws or ordinances; and

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(9) Insurance. Borrower shall have furnished to the Lender, premiums prepaid, insurance policies in companies, coverages and amounts satisfactory to the Lender, insuring the Project against loss or damage by fire and such other hazards, as may be requested by the Lender, including, but not by way of limitation, extended coverage, vandalism, malicious mischief and including a so-called Builder's Risk-All Risk Completed Value non-reporting form of policy for 100% of the insurable value of the Project. All policies shall contain loss payable clauses satisfactory to the Lender and shall be delivered to the Lender, and shall provide the following coverages:

(8) Permanent Lender. An agreement may have been entered into by the Lender, Borrower, and Permanent Lender, if applicable, (hereinafter sometimes called the "Take-Out Agreement") wherein, subject to the terms and conditions therein set forth, the Permanent Lender shall agree to purchase the Note and Mortgage in accordance with its Commitment.

(7) Permits, Plans. Borrower shall have furnished to the Lender, a set of final building permit covering all phases of construction and (ii) a set of final plans and specifications (hereinafter sometimes called the "Plans and Specifications") for the Project, prepared by the Architect, in form satisfactory to the Lender, together with written evidence of final approval thereof by the Permanent Lender. Prior to each advance subsequent to the initial advance, all material changes in the Plans and Specifications shall likewise have received the prior written approval of both the Permanent Lender, if applicable, and the Lender.

(6) Updated Title. Prior to the making of each advance subsequent to the initial advance, said title guarantee company shall have furnished a further written report on title stating in effect that it has again examined the title to the Premises and that there has been no change in the condition of title since the last such examination, and which later report shall also contain said title company's interest guarantee for all construction loan disbursements, including the pending disbursement, and shall cover a date not earlier than five days prior to the making of each subsequent advance.

(5) UCC Searches. Borrower shall from time to time, at the request of the Lender, furnish to the Lender, in form satisfactory to the Lender, a search of public records disclosing the existence of no outstanding ownership or security interest by any third party in and to any improvements, buildings, furniture, furnishings or equipment located on the Premises.

making of actual disbursements on account of the loan; and to such other matters and things as may be approved by the Lender. Said title commitment shall include "extended coverage" over standard title policy exceptions, comprehensive endorsement No. 1, additional coverage endorsement, and a proper legal description of the premises all in form satisfactory to the Lender. In addition, said policy will contain an endorsement insuring that the loan is being made for a "business purpose" as defined in the Illinois interest Statute. If said endorsement is not available, Borrower shall furnish the Lender and Permanent Lender with such other evidence, in form satisfactory to them, that the proceeds of the loan will be used for such "business purpose." The foregoing policy or commitment shall also be approved by the Permanent Lender, if applicable.

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(11) Compliance. All of the terms and provisions of paragraph 5 of this Agreement shall have been complied with and performed.

(10) No Existing Defects. Borrower shall furnish the Lender, from time to time as the Lender may request, in form satisfactory to said Lender, with accepted certificates or other evidence that there are no existing defects either under the Permanent Commitment, if applicable, or the various space leases, and that all of said leases are in good standing and in full force and effect.

(9) Any other insurance required by Lender, in such amount and for such terms as are acceptable to Lender;

(8) Flood Insurance as required under the Flood Disaster Protection Act;

(7) Professional liability insurance covering the Engineer and all other architects and engineers involved in the project;

(6) Workers' Compensation Insurance (including employer's liability in an amount satisfactory to Lender and if applicable, insurance covering claims of workers against employers arising under Federal law) covering all officers and employees or beneficiary and the contractors under the construction contracts and, if required under applicable law, any subcontractor engaged in work on, or with respect to, the Property, in such amount as is reasonably satisfactory to Lender and in amounts not less than any minimum amounts established by law.

(5) Comprehensive general liability insurance, naming Lender an additional insured, providing for broad form property damage coverage, broad form contractual coverage, personal injury coverage with employee exclusion deleted, scaffolding act coverage, and products and completed operations coverage, insuring against liability for personal injury, bodily injury, death and property damage occurring in, on or about the Property or the adjoining streets, sidewalks or passageways, with deletion of exclusions regarding loss or damage to property caused by explosions or resulting from collapsed buildings or structures or underground property damage (commonly referred to by insurers as the XCU hazards);

(4) Insurance on all completed improvements against loss by fire, lightning, the risks covered by what is commonly known as fire and Extended Coverage, malicious mischief and vandalism, and all other risks of direct physical damage or loss in an amount equal to the greater of (i) full replacement value or the replacement form basis of said improvements, or (ii) the principal balance of the loan from time to time; such insurance shall be in full compliance with any co-insurance clause in such policy;

(3) Builders completed value risk insurance against "all risks of physical loss", for the full insurable value of work performed and equipment and supplies furnished (without any deductible clause unless approved in writing by Lender) with an endorsement granting permission to occupy upon completion of work or occupancy, and payable to Lender under an attached Lender's Loss Payable Endorsement;

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An application for distribution (A.I.A. Document 672 or 673 or other form acceptable to lender); current and updated site policy statements; in compliance with applicable laws and as may be required by the site company; an updated project budget and construction program schedule; such certifications regarding the status of the project and such additional supporting information and certifications as lender may reasonably require (all of such items being heretofore referred to collectively as "certifications" and individually as a "certification"); and shall be subject to lender's independent inspection and reasonable approval of the work covered by each such certification. No Advance for Construction Cost shall

following:
Construction Cost shall be based on presentation to lender in a form and substance satisfactory to lender, not more frequently than monthly, of the

(14) Advance for Construction Cost; Item. (a) Each Advance for Construction Cost shall be based on presentation to lender in a form and substance satisfactory to lender, not more frequently than monthly, of the following:
(13) Construction Statement. Borrower shall furnish the lender, in connection with duplicate copies of any new contract shown therein. advance, Borrower shall furnish the lender with a paid and sworn Construction Statement. At the time of each advance submitted to the initial duplicate copies of all construction contracts shown in such sworn statement, in duplicate, sworn to by the Borrower and General Contractor, meeting for all prime contracts and subcontractors and the amount of each and all duplicate copies of all construction contracts shown in such sworn statement, Borrower shall furnish the lender, in connection with (1) a detailed Construction Statement, and (2) a detailed Construction Statement, together with duplicate copies of any new contract shown therein.

(12) Plot or Survey. The Lender shall have received, in triplicate, a plot of survey, certified to be a registered surveyor and showing all easements or foundations in place within the lot lines of the premises and showing no encroachments on the premises by structures owned by others, and disclosing all easements, improvements, utilities, rights of way, whether above ground or underground, which exist at the date of certification, as well as then existing set-back lines, access to and from the premises and public streets, and other matters affecting the title to the premises and showing no state of facts objectionable to the lender or Permanent Lender; (11) certificate of occupancy, or other appropriate certificate of applicable governmental authority evidencing compliance with all zoning, building and other pertinent regulations, if such certification or other evidence of compliance is customarily issued by the applicable governmental authority; and (11) certification by the Architect that the project was inspected from time to time during the course of construction and that all improvements have been completed in accordance with approved plans and specifications.

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(16) Discharge of Lien. Within five (5) days of the discovery of any lien, encumbrance or charge, pay the same and obtain and record a written release thereof, provided, however, if borrower desires to contest the validity of the lien, encumbrance or charge, borrower shall first contest in good faith the validity thereof so long as borrower shall first deposit with lender a bond or other security satisfactory to lender in such amounts as lender may reasonably require, but not less than one hundred fifty (150%) percent of the amount of each such lien, encumbrance or charge, or procure an endorsement to the policy of title insurance satisfactory to lender insuring over claims of any such lien, and provided further, that borrower

(15) Notice of Lien. Upon discovery of any claim of lien or encumbrance or charge against the project or any part thereof, forward immediately to lender a copy of each recorded notice of intent to file mechanics' liens, encumbrances, liens, encumbrances, or other charge against the project or any part thereof, together with a written explanation of the controversy;

(e) Lender shall not be required to make advances respecting any cost, other than construction costs or for acquisition of the Land.

(7) All other requirements, covenants, warranties and agreements of borrower and beneficiary under this agreement shall have been complied with or of no event of default has occurred.

(6) Lender and any independent contractor consultant retained by lender shall be satisfied that the project has been fully and satisfactorily completed in accordance with the plans and specifications;

(5) Receipt by the lender of such title insurance endorsements to the policy of title insurance described in Section (4) hereof as the lender may require;

(4) Receipt by the lender of a certificate of the Project Engineer in the form of Exhibit "C" attached hereto and by reference made a part hereof, as the lender may require;

(3) Receipt by the lender of record "as built" plans and specifications for the improvements certified to lender by the Project Engineer;

(2) Receipt by the lender of a copy of the certificate of the Village, City, County or State to the lender that the improvements meet all requirements of all public agencies having jurisdiction over them, may be used and operated in accordance with terms and conditions under which the improvements were to be installed, and have been accepted by the Village as publicly owned and maintained;

(1) No notices of mechanics' liens have been recorded and no legal process under any mechanics' lien law or similar law is issued and outstanding or has been served on lender, and lender has received from contractor and all subcontractors and materialmen of written waivers of lien rights and affidavits that all bills for labor and materials have been paid;

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thereafter shall diligently proceed to cause such lien, encumbrance or charge to be removed or discharged;

(17) Conflict in Agreements. Prior to making each advance, Borrower shall have complied with and shall have performed all of the other terms and provisions contained in this Agreement or any construction loan Escrow Trust or Agreement. In the event of a conflict as between this Agreement and any construction loan escrow agreement, this agreement shall govern.

(18) Unrepaired Damage to Project; Restoration of Improvement. At the time of the making of each advance hereunder, there shall be no substantial unrepaired damage to the Project by fire or other casualty which is not covered by insurance collected or in the process of collection in amounts adequate, in the lender's opinion, to complete and pay for the construction of the Project. If the improvements or any part thereof are damaged or destroyed by any means, including, without limitation, by flood, earthquake, wind, or fire, promptly restore the improvements to their prior undamaged condition, and Lender shall not be obligated to make any further advances until such restoration is completed to Lender's satisfaction. If the aforesaid damage or destruction occurs prior to the completion date, any insurance proceeds available by reason of such damage or destruction shall be received by Lender and shall be available to Borrower. If Borrower is not in default under the Loan Documents, upon presentation of bills covering any labor and materials used in restoration; provided, in Lender's sole opinion, (1) sufficient funds (exclusive of any portion of the loan amount not then advanced and any funds then remaining in any Reserves) are available to complete the restoration, and (2) the restoration and completion of the improvements will be completed on or before the completion date. If the aforesaid damage or destruction occurs subsequent to the completion date, the availability of insurance proceeds for restoration shall be governed by the Mortgage;

(19) Borrower's Counsel Opinion. The Lender shall have received the favorable opinion of Borrower's counsel, dated the date of the initial advance hereunder and addressed to the Lender, form and substance satisfactory to the Lender.

(20) No Event of Default. At the time of the making of each advance hereunder, no Event of Default (as herein defined) shall have occurred, nor shall any circumstance exist which, with the giving of notice or the passage of time, or both, would, in the reasonable opinion of the Lender, constitute an Event of Default.

(21) Evidence of Compliance. Satisfactory evidence shall be furnished to the Lender, request of the Lender, if interim inspections have been made on behalf of the Lender during construction of the Project, that the Lender is satisfied that construction complies in all respects with the Approved Plans and Specifications.

(22) Application for Advance. Concurrently with the notice of intention to effect a borrowing (whether the initial or subsequent borrowing) Borrower shall also furnish the Lender a verified "Application for Advance" showing, in itemized and cumulative form, the aggregate cost to Borrower of any items of expense, listed in the original Project Cost Analysis.

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(24) Contractor Approval. The Contractor under each construction contract, the Project Engineer as well as all major subcontractors shall be subject to the approval of Lender, and in connection therewith, Borrower shall obtain, at Lender's request, current financial statements and credit reports of such Contractor and the Contractor's Qualification Statement (A.1.V. Document A305). Lender shall have been furnished with each construction contract covering the entire Project (including all contracts with the Engineer) as well as executed copies of all construction contracts between Borrower and all contractors, architects and engineers and executed copies of such contracts between the Contractor and all of its subcontractors and material suppliers as Lender shall request. No changes shall be made in any

(23) Construction Documentation. A Sworn Owner's Statement executed by the Beneficiary and each Contractor under a construction contract, and approved by the Project Engineer, the authorized agent of Borrower, and Lender or Lender's consulting engineer, if any, reflecting the trade-by-trade, dollar-by-dollar breakdown of the cost of the construction, and detailing the names of all subcontractors and material suppliers, and the portions of the work to be done or the material to be furnished by each subcontractor or material supplier, the amount therefor, and to each of them and the sum due or to become due to each of them. All such Sworn Owner's and Contractor's Statements shall be prepared on forms furnished by Lender, or on such other forms as may be satisfactory to Lender and to the Title Company, and shall fully comply with the mechanic's lien laws of the State where the land is located. If Borrower or the Beneficiary have entered into more than one general (or direct) contract for the Project, Borrower shall deposit a Sworn Contractor's Statement for each such contract and Contractor!

therefore actually expended by Borrower, concurrently with the furnishing of such Application for Advance, Borrower will deliver the written certificates of the General Contractor and of itself, with approval by the Lender's inspection engineer, in form satisfactory to the Lender, to the effect that the progress of the construction of the Project has been such that it can be completed and ready for occupancy by not later than April 30, 1989, or by such later date as may be approved by the Lender; that said construction is proceeding in substantial accordance with the approved plans and specifications and in compliance with the requirements of the Permanent Commitment, and the various space leases, and that the aggregate undistributed balance of the funds to be advanced under this Agreement is sufficient to pay for the completion of the Project and all expenses of every kind and nature in connection therewith, Borrower will forthwith, upon demand, deposit the amount of the deficiency with the Lender, and such deposit shall first be exhausted before any further disbursement of the proceeds of the loan shall be made, or shall otherwise satisfy the Lender, that such deficiency will be met.

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Upon ten days prior written notice furnished Borrower by the Lender (which notice, however, will not be required after an Event of

6. FEES; EXPENSES; COSTS; DEDUCTIONS

(28) Hazardous Material. Such evidence as Lender may require demonstrating that the Land contains no harmful, toxic, hazardous, or environmentally damaging or dangerous substances thereon or thereunder, and that the Land was not heretofore used for any purpose (by way of example, and not of limitation, as a hazardous waste dump or storage facility) which could render the Land now or hereafter harmful, toxic, hazardous, environmentally damaging or dangerous.

(27) Evidence of Filing or Recording. Evidence that all of the Loan Documents (or a financing statement relating thereto) shall have been duly filed or recorded (or delivered to the Lender in the event possession is the only method of perfection of a security interest) as required or permitted by law in all places deemed advisable by Lender to protect and preserve the security interest or lien created thereby as a valid and enforceable prior perfected security interest in, or a legal, valid and binding lien on, the Property and the Personal Property.

(26) Approval. Certified copies of any Annexation Agreement and/or Ordinance, all approvals, consents and permits of any governmental authority, which, in Lender's opinion, are required in connection with this Agreement and any transaction contemplated hereby, including, without limitation, any consents, approvals, licenses or permits required by the Village or City or the County or the State or the Sanitary District or the Environmental Protection Agency or by any other applicable governmental body or under any environmental protection, land use or development law, Ordinance or regulation required for or in connection with the Project, together with evidence satisfactory to the Lender that there is currently available sufficient water, gas, electric, sewage disposal, fire protection and other public utilities required in connection with construction of the Work or utilization of the improvements, that adequate ingress and egress to and from the Land and public roads exist and that the Borrower, and the Beneficiary, if applicable, have, and will have upon completion of the Work, completed with all applicable environmental protection rules, laws, ordinances, statutes and regulations. All such utilities shall enter the Premises directly from a public right of way or easements satisfactory to Lender.

(25) Interest Equalization Tax. Borrower hereby certifies that the Loan to be disbursed hereunder is not subject to the Interest Equalization Tax and agrees that should the Loan be subject to said Tax, Borrower will pay the same.

Agreements between Engineer and Borrower (or Borrower's agents) or any Consultant, not shall any extra be authorized or approved by Borrower, or new additional Consultant Contracts, subcontractors or purchase orders be let, without, in each instance, the prior written consent of the Lender. In the event of any discrepancies between the terms of this Agreement and any contract between Borrower and the Engineer, contractor or material supplier, the terms of this Agreement shall prevail and Borrower shall estimate any such discrepancies;

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Paragraph 8(a), the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer and therefore an event of Default hereunder: (1) any sale, conveyance, assignment or other transfer of any shares, stock or other securities of or issued by Beneficiary; (ii) any pledge or grant of a security interest in any shares, stock or other securities of or issued by Beneficiary; (iii) any sale, conveyance, assignment or other transfer of or issued by Beneficiary which results in any material change in the identity of the individuals provisionally in control of the Beneficiary; (iv) the grant of a security interest in any share of stock of any corporation

8. For the purpose of, and without limiting the generality of, Paragraph 8(a), the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer and therefore an event of Default hereunder: (1) any sale, conveyance, assignment or other transfer of any shares, stock or other securities of or issued by Beneficiary; provided that if a shareholder of the Beneficiary dies or becomes incapacitated, a transfer to a successor shareholder, subject to the approval of Lender, which approval will not unreasonably be withheld, will not be an event of default; (ii) any pledge or grant of a security interest in any shares, stock or other securities of or issued by Beneficiary; (iii) any sale, conveyance, assignment or other transfer of or issued by Beneficiary; (iv) the grant of a security interest in any share of stock of any corporation

7. ASSIGNMENTS
Borrower agrees that it will not assign or encumber any of its rights under this Agreement or under the Permanent Commitment, if any, or convey, encumber or dispose of any interest, legal or beneficial, in the premises, except with the written consent of the Lender. Any permitted assignment or encumbrance of Borrower's said rights shall not be construed as extending to further assignments or encumbrances of said rights.

8. PROHIBITION ON SALE OR FINANCING
A. Sell, convey, assign, pledge, hypothecate, encumber or otherwise transfer title to, or any interest in, or place of any lien upon, or any interest therein (whether voluntary or by operation of law) without the Mortgagee's prior written consent.
B. For the purpose of, and without limiting the generality of, Paragraph 8(a), the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer and therefore an event of Default hereunder: (1) any sale, conveyance, assignment or other transfer of any shares, stock or other securities of or issued by Beneficiary; provided that if a shareholder of the Beneficiary dies or becomes incapacitated, a transfer to a successor shareholder, subject to the approval of Lender, which approval will not unreasonably be withheld, will not be an event of default; (ii) any pledge or grant of a security interest in any shares, stock or other securities of or issued by Beneficiary; (iii) any sale, conveyance, assignment or other transfer of or issued by Beneficiary which results in any material change in the identity of the individuals provisionally in control of the Beneficiary; (iv) the grant of a security interest in any share of stock of any corporation

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3. If any representation or warranty made herein by Borrower or other party made in writing in connection with this Agreement, shall prove to be or have been false in any material respect either when made or subsequently, and such representation or warranty is not corrected or made good within thirty (30) days after written notice thereof shall have been given to Borrower; or

4. If Borrower shall fail to keep and perform any other covenant or condition herein contained or contained in any continuation loan agreement or Borrower's note to be kept and performed, and such failure shall continue for fifteen (15) days after written notice thereof from the Lender to Borrower; or

5. If, for any reason whatsoever, there shall be an unsecured default under any of the terms and provisions of the Mortgage or any other of the various loan documents given to secure the Lender's loan; or

6. If, for any reason whatsoever, the Permanent Lender, if applicable, shall terminate or refuse to fulfill its commitment or its Take-Out Agreement or if there by any unsecured default by any party to said Commitment or Agreement; or

7. If there shall be a failure to pay, when due, the principal of the Note, or any installment of interest thereon, and such failure shall continue for a period of fifteen (15) days after written notice thereof to Borrower from the Lender; or

If any of the following events of default shall occur:

9. DEFAULT(S); REMEDIES

D. Any consent by Lender to, or any waiver of any event which is prohibited under this paragraph 8 shall not constitute a consent to, or waiver of, any right, remedy or power of Lender upon a subsequent event of default.

C. It is understood and agreed that the indebtedness secured hereby was created solely due to the financial sophistication, creditworthiness, background and business sophistication of the Borrower and Lender continues to rely upon same as the means of maintaining the value of the Project or Contracts. It is further understood and agreed that any secondary or junior financing placed upon the Project or Contracts, or upon the interests of the Borrower (or in the event the Borrower is a trust, the beneficial interest of the trust) may divert funds which would otherwise be used to pay the indebtedness secured hereby, and could result in acceleration and/or foreclosure by any such junior lienor or holder of a security interest. Any such action would force the Lender to take measures, and incur expenses, to protect its security, and would detract from the value of the promises mortgage hereby, and impair the rights of the Lender granted hereunder.

B. It is understood and agreed that the Lender shall have the right to exercise its remedies; (v) any sale, conveyance, assignment or other transfer, or the granting or creation of any lien upon or security interest in, the beneficial interest under or power of direction under the Trust, directly or indirectly controlling the beneficiary which could result in a material change in the identity of the individuals previously in control of the Beneficiary if the secured party holding such security interest would exercise its remedies; (v) any sale, conveyance, assignment or other transfer,

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(6) Lender may, at its option, exercise from time to time any and all rights and remedies available to it under the Uniform Commercial Code and Illinois, or otherwise available to it, including those available under any written instrument (in addition to the note) relating to any of the obligations or any security therefor, and may, without demand or notice of any kind, appropriate, set-off and apply toward the payment of such of the

(5) Lender may, at its option, sell all or any of the collateral at public or private sale, upon such terms and conditions as Lender may deem proper, and Lender may purchase any or all of the collateral at any such sale, and Lender may apply the net proceeds, after deducting all costs, expenses, and attorneys' fees incurred at any time in the collection, protection, and sale of the collateral and the obligations, to the payment of the note, and any of the other obligations referred to in any and/or all of the security documents securing the Note.

(4) Sue any one or more of the personal or corporate Guarantor(s), if any, or any other guarantor(s) or any of the obligations, and exercise such of the rights and remedies under any such agreements as Lender may choose to exercise.

(3) Exercise such of the rights and remedies granted under any Note, any Mortgage and/or Assignment of Leases, or afforded Lender under the Uniform Commercial Code of Illinois or in any one or more of such instruments, or any of the other related security and lien documents, as Lender may choose to exercise.

(2) Realize on any other collateral pledged or given by Borrower(s) to Lender pursuant hereto simultaneously with any foreclosure of any Mortgages, after any such foreclosure or prior to any such foreclosure.

(1) Foreclose the lien of the Mortgage/or other mortgages instruments, if any.

proceed to recover on any bonds furnished in connection with the connection of the project, and (iv) enter upon the premises and take possession thereof, without a court order, complete the construction of the project and do anything which in its sole judgment is necessary or desirable to fulfill, pay, settle or complete the obligations of Borrower hereunder or to complete the project, including the right either to avail itself of and procure performance of existing contracts or by locating new contracts with either the name of contractor or architect or with others. Borrower shall be liable to the lender for all sums paid or incurred for the construction, completion and equipping of the project, whether the same shall be paid or incurred pursuant to the provisions of this paragraph or otherwise, and all payments made or liability incurred by the lender hereunder, or any kind whatsoever, shall be paid upon demand, with interest to the date of payment at the rate of three percent over the applicable interest rate provided for in the Note, and all of the foregoing, including interest, shall be deemed and shall constitute advances under this Agreement. The assumption of any one or more of the aforementioned remedies shall not preclude the lender from invoking any other remedies. Without limitation of the foregoing, Lender shall also have the following remedies, in addition to and not in lieu of or in substitution for all other rights and remedies provided by law, to do any or all of the following in the lender's sole discretion:

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Obligations, including costs of collection and reasonable attorneys' fees, and in such order of application as the Lender may from time to time elect, any balances, credits, deposits, accounts or moneys of the Borrower(s). Any notification of intended disposition of any of the collateral required by law shall be conclusively deemed reasonably and properly given if given at least five calendar days before such disposition.

(7) Take control of any proceeds and products of any of the collateral; extend or renew for one or more periods (whether or not longer than the original period) the note or any obligation of any nature of any obligor with respect to the note or any of the collateral, and grant any releases, compromises or indulgences with respect to the note or any extension of renewal thereof or any security therefor or to any obligor hereunder or thereunder.

(8) Be afforded all rights of a creditor as are provided in the Bankruptcy Code, now existing or hereafter amended; or exercise such additional rights and powers, if any, with respect to any security for or guaranty of any of the Obligations, as may be provided in any written instruction (in addition to the note); provided, however, that any such action of the Lender as herein set forth shall not in any manner whatsoever, impair or affect the liability hereunder, nor prejudice nor waive nor be construed to impair, affect, prejudice, or waive Lender's rights and remedies at law, in equity or by statute, nor release or discharge, nor be construed to release or discharge, the Borrower(s), or any one of them, or any guarantor or other person, firm, corporation, or other entity liable to the Lender for the Obligations or indebtedness, whether now existing or hereafter created or arising, evidenced by any note.

(9) The Lender and Note holder may exercise the option to accelerate the Note(s) during any default by Borrower(s) or Maker(s) of the Note regardless of any prior forbearance or acceptance of any late or partial payment by the Note holder or Lender, all of which action of forbearance shall not constitute a waiver.

(10) If suit is brought to collect the Note(s), the Note holder or Lender shall be entitled to collect all reasonable costs, and expenses of suit, including, but not limited to, reasonable attorneys' fees, court fees, publication costs, abstract and title expenses.

(11) If any payments of interest on the unpaid principal balance due under the Note(s) or any escrow fund payment for taxes or insurance required under any mortgage becomes overdue for a period in excess of ten (10) days, undersigned shall pay to Lender a late charge of five cents (\$.05) for each dollar so overdue in order to defray part of the increased cost of collection resulting from such late payments.

(12) If any attorney is engaged by Lender, including in-house staff (a) to collect the indebtedness evidenced hereby or due under the Loan Documents, whether or not legal proceedings are thereafter instituted by Lender; (b) to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Note; (c) to protect the liens of any of the Loan Documents; (d) to represent Lender in any other proceedings whatsoever in connection with the Note(s) or any of the Loan Documents or the real estate described therein;

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Any notice that lender or borrower(s) may desire or be required to give to any other party hereto shall be in writing and shall be mailed to

11. NOTICES.

E. Monthly interest accruals under the Note shall be debited against the Reserve and made for same unless the monthly interest accruals are paid by borrower, in which event borrower shall be reimbursed for same from the Reserve.

D. Provided that the borrower is not in default herein, that the loan and this Agreement are free of default and current in all respects, that the loan is in balance before and after each distribution, that such certificate and inspection requested by lender have been given and made, and that any other conditions or requirements contained in this Agreement are satisfied, lender shall make Advances from the Reserve (but not from any Reserve pursuant to Paragraph 2.10(d) above) for the purposes and uses provided for herein, by paying the loans for which the Reserve were set aside, or by reimbursing borrower for its having paid the same for producing and necessary evidence of such payments. Until any such Reserve is used or distributed as herein set forth, no interest shall accrue or be paid or payable thereon.

C. At all times during the term of the loan, borrower agrees to keep the loan in balance such that the funds remaining in the loan amount (not including Reserve) shall, at all times, be sufficient to complete the work and improvements in accordance with the terms hereof, free and clear of mechanic's liens or other claims. Should the borrower undertake any changes in construction which result, in the aggregate, in an increase in the cost of TEN THOUSAND AND NO/100 (\$10,000.00) DOLLARS or more, or should circumstances (whether or not within the control of borrower) cause an aggregate increase of TEN THOUSAND AND NO/100 (\$10,000.00) DOLLARS or more in the cost necessarily to complete the project of any duration of a Reserve, borrower shall immediately deposit with lender sufficient monies to pay for the same, and will not commence upon any such additional construction unless such funds are deposited in advance. It is the intention of the parties hereto that the loan shall, at all times hereafter, be and remain in balance up to and including the time of final distribution.

B. The parties hereto covenant and agree that after setting aside the aforesaid reserve (hereinafter referred to collectively as the "reserves" and individually as a "Reserve"), the not balance of the loan amount must at all times be sufficient to pay, in full, all costs and expenses to complete the improvements and work as described on the project budget, including, but not limited to, the charges of all contractors, subcontractors and materialmen in accordance with the Construction Contract and sworn contractor's statements heretofore described; with the further proviso that should the not balance of loan amount, after deducting the Reserves, be insufficient for such purpose or purposes, borrower shall immediately deposit with lender, in a non-interest bearing account, a sum of money, which together with the not balance of loan amount, after deducting the Reserves, will be sufficient to accomplish such purposes.

consent to such failure to complete the work and improvements prior to the Completion Date.

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While the project is being constructed, then both the Lender and Permanent Lender, if applicable, shall have the right to erect a sign or signs on the Premises of such placement, size, form and wording as may be reasonably required, respectively, by either the Lender or Permanent Lender, indicating the sources of both the interest and long term financing, but at no expense to Borrower.

13. SIGNS

(b) The Borrower(s) and Lessor, and each one of them, waive the benefit of any right in law or equity that would otherwise restrict or limit Lender in the exercise of its right, which is hereby acknowledged, to appropriate at any time hereafter any indebtedness owing from the Lender to the Borrower(s), or any one of them, The Borrower(s), and each one of them, waive every defense, counterclaim or setoff which the Borrower(s) or any one of them, may now have or hereafter may have to any action by Lender in enforcing the note or the collateral and ratify and confirm whatever Lender may do pursuant to the terms hereof and with respect to the Collateral.

(a) No failure to exercise, and no delay in exercising, on the part of the Lender, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any right or limitation provided by law. No notice to or demand on Borrower in any case shall, in itself, entitle Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Lender to any other or further action in any circumstances without notice or demand.

12. WAIVERS

- A. If to Borrower:
 - 223 W. Ontario Association, Ltd.
 - Chicago, Illinois 60610
 - B. If to Lessor:
 - 223 West Ontario Corporation
 - c/o Kenneth H. Denberg
 - 208 S. LaSalle, Suite 468
 - Chicago, Illinois 60604
 - C. If to Lender:
 - Capitol Bank and Trust
 - 4801 W. Fullerton
 - Chicago, Illinois 60639
- Attn: Commercial Lending Dept.

delivered to the intended recipient thereof at its address hereinabove or hereinafter set forth or at such other address as such intended recipient may, from time to time, by notice in writing, designate to the sender pursuant hereto. Any such notice shall be deemed to have been delivered two (2) business days after mailing by United States certified mail, return receipt requested, or when delivered in person. Unless specifically required herein, notice of the exercise of an option granted to Lender by the Loan Agreement or any other document or Note related to this transaction is not required to be given.

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If Borrower shall fail to discharge any lien, encumbrance or charge, as provided in Section 5B(16), then, in addition to any other right or remedy,

17. DISCHARGE OF LIEN BY LENDER

Any approval by the Lender or Permanent Lender, if applicable, of construction of the project or any part thereof, or of the Plans and Specifications, shall impose no responsibility on any of them as to adequacy or legality thereof, nor shall any of them be in any way estopped by any such approval from requiring re-execution of any portion of construction of the Project where construction is in fact illegal or inadequate or where construction does not conform to the approved Plans and Specifications.

16. ADEQUACY; LEGALITY OF PROJECT

It being the intention of Lender and Underwriter to comply with the laws of the State of Illinois, it is agreed that notwithstanding any provision to the contrary in the Note(s), the Mortgage, or any of the other Loan Documents, no such provision shall require the payment or permit the collection of any amount ("Excess Interest") in excess of the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the indebtedness evidenced by the Note(s). If any Excess Interest is provided for, or is adjudicated to be provided for, in the Note(s), the Mortgage, or any of the other Loan Documents, then in such event: (a) the provisions of this paragraph shall govern and control; (b) neither Underwriter nor any of the other Obligor(s) shall be obligated to pay any Excess Interest; (c) any Excess Interest that Lender may have received hereunder shall, at the option of Lender, be (i) applied as a credit against the then outstanding principal balance of the Note(s), accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both, but, in the event of such prepayment, an anticipation fee or premium shall also be paid equal to the difference between the aggregate interest paid and the aggregate interest that would otherwise have been payable on such prepaid principal to date of prepayment, provided, further, that the aggregate interest paid and anticipated fee or premium shall not exceed the aggregate legal interest that could have been paid to the stated maturity of the Note(s); (ii) refunded to the payor thereof, or (iii) any combination of the foregoing; (d) the applicable interest rate or rates shall be automatically subject to reduction to the maximum lawful contract rate allowed under the applicable usury laws of the aforesaid State, and the Note(s), the Mortgage, and the other Loan Documents shall be deemed to have been, and shall be reformed and modified to reflect such reduction in such applicable interest rate or rates; and (e) neither Underwriter nor any of the other Obligor(s) shall have any action or claim against Lender for any damages whatsoever arising out of the payment or collection of any Excess Interest.

15. USURY; EXCESS INTEREST

This Agreement has been made and entered into the State of Illinois and shall be interpreted in accordance with the law thereof and shall be binding upon and inure to the benefit of the respective parties hereto and their respective successors and assigns.

14. LAWS; SUCCESSORS; ASSIGNS

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Lender shall have the right to commence, appear in, or defend any action or proceeding purporting to affect the rights or duties of the parties

21. DEFENSE OF ACTIONS BY LENDER

Upon the occurrence of an event of default, in addition to any other rights which lender may have, lender may, without limiting their rights in any way, to borrower or to contractor, and without limiting their rights in any way, take possession of the property and personal property and to contract for or proceed with completion of all or any portion of the improvements in accordance with the plans and specifications (as same may be modified by lender in its discretion) and make advances to pay the cost thereof and pay directly to contractor, any other contractor, subcontractor, and the like, should such costs exceed the undistributed portion of the loan amount lender may advance such additional amounts for the account of borrower, which amounts shall be considered to be and shall be a separate and additional loan to borrower and the repayment thereof, together with interest thereon at the rate stipulated in the note, shall be secured by the loan documents and shall be due and payable immediately upon notice from lender to borrower.

20. POSSESSION OF PROPERTY BY LENDER

It is understood and agreed that lender's rights of inspection, approval and review herein contained are for the sole purpose of protecting lender's security. The approval of a disbursement by lender shall not be construed as any indication or assurance respecting the quality or sufficiency of the work. The possession and/or exercise of the right of inspection and the right to make or withhold advances as provided in this agreement, shall not be construed to impose any obligation on lender to insure that work or materials are in compliance with the plans and specifications or any governmental building requirements. Lender is not responsible or obligated to any person other than borrower to make advances. No person other than the subscribing parties of this agreement and their respective successors or assigns may maintain any action under or respecting the loan documents or the transactions contemplated thereby, and borrower shall indemnify and forever hold lender harmless against any damages, claims, liabilities or expenses (including attorneys' fees and costs) incurred by lender as a result of preparing for and/or defending any such action.

19. DISCLAIMERS OF LENDER

Representatives of lender have the right to enter upon the property at all times after execution hereof, and it is lender's opinion the work is not in conformance with the final plans and specifications. Lender has the right to stop the work and order its replacement whether or not such unsatisfactory work has theretofore been incorporated into the improvements, and lender shall have no obligation to make any advance until such work is satisfactory.

18. INSPECTION

of lender, lender may, but shall not be required to, discharge the same either by paying the amount claimed to be due or by procuring a discharge of such lien by depositing in court a bond for the amount claimed or otherwise giving security for such claim in such other manner as is or may be prescribed by law.

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Paragraph headings are for reference only, and shall not affect the interpretation or meaning of this Agreement.

27. HEADINGS

Whenever provision is made herein for the approval or consent of Lender, or that any matter be so Lender's satisfaction, unless specifically stated to the contrary, such approval or consent shall be made by Lender in its sole discretion and determination.

26. APPROVAL

This Agreement is a loan agreement entered into to provide for the orderly distribution of the proceeds of the Loan and to define the obligations and liabilities of the parties hereto. This Agreement, and any document or agreement entered into in connection herewith, shall not be deemed to create any relationship between Borrower and Lender other than a debtor-creditor relationship. Borrower hereby acknowledges that Lender is not a partner or joint venturer of any kind or partnership or shareholder of any corporation, and Borrower(s), Lender, and Guarantors(s) agree to hold Lender harmless and indemnify Lender from any and all damages resulting from any such construction of the relationship of the parties hereto.

25. LOAN AGREEMENT

24. TIME OF ESSENCE. Time is of the essence of this Agreement.

This Agreement and any other Loan Document attached hereto or referred to herein include all the terms and conditions mentioned herein or incidental hereto, and supersede all oral negotiations and prior writings in respect of the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Agreement and any such other Document, the terms, conditions and provisions of this Agreement shall prevail.

23. ENTIRE AGREEMENT

Lender may at any time sell, assign, transfer, negotiate, grant participation in, or otherwise dispose of, to any other person, firm or corporation, all or part of Borrower's indebtedness under this Agreement or the Note; provided, that such disposition will not be in such form as to require registration under the Federal Securities Act of 1933, as then amended, or the corporate securities law of any state. Borrower shall, from time to time at the request of Lender, execute and deliver to Lender or to such party or parties as Lender may designate, any and all further documents as may in the opinion of Lender be necessary or advisable to give full force and effect to such disposition.

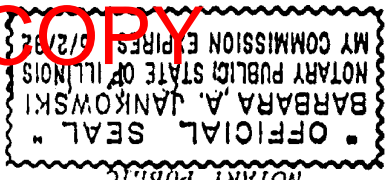
22. PARTICIPATION OF LOAN

hereof or the distribution of any loan proceeds and in connection therewith pay necessary expenses, employ counsel and pay such reasonable counsel's fees. All such sums reasonably expended by Lender, and all other sums expended by Lender in protecting its rights in connection with the transactions contemplated by this Agreement, shall constitute loans made by Lender to Borrower, payable upon demand by Lender, accruing interest at the rate stipulated in the Note, and shall be secured by the Loan Documents.

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SUBSCRIBED TO AND SWORN BEFORE ME THIS 24th DAY OF December 19 85.

By: [Signature]
CAPITOL BANK AND TRUST
LENDER:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

b. The terms "Maker(s)", "Mortgagor(s)" and "Borrower(s)", as used in the Note, the Mortgage, or the Loan Agreement, means 223 West Ontario Associates, Ltd., an Illinois limited partnership. Any liability or obligation of the Makers, Mortgagors, or Borrowers shall be limited to the partnership assets of 223 West Ontario Associates, Ltd., and no general or limited partner of 223 West Ontario Associates, Ltd., shall be individually or personally liable for any claim arising out of the Note, Agreement, or Mortgage.

a. Whenever the term "Borrower" is used herein, providing a Trust is involved, it shall mean Trust and Beneficiary, each individually, and both collectively, unless the context clearly requires to the contrary.

29. BORROWER

Borrower(s), Lessor, and Guarantors, each jointly and severally, hereby agree to indemnify and forever hold Lender (and its successors and assigns) harmless from and against any and all liability for injury to persons or property, damages, expenses, costs of environmental clean-up, waste and hazardous substance disposal, penalties, fines, costs (including attorneys' fees, and costs and expenses incidental to any court or administrative proceedings) which Lender may incur or be found liable for (i) because the land or any improvements contain or are alleged to contain, or cause or are alleged to cause, any harmful hazardous, toxic, environmentally damaging or dangerous substances or conditions, or (ii) because of any enforcement actions brought pursuant to any local, State or Federal statutes, rules, regulations, court orders, administrative rulings, or the like, or (iii) because of any private or public lawsuits, whether or not such lawsuits are in the nature of nuisance abatement, claims for personal injury or property damage, or the like. The indemnification and hold harmless agreements contained herein shall survive the termination of this Agreement and the repayment of the Loan, notwithstanding any releases hereinafter granted by Lender or its successors or assigns, and in addition to and not a substitution for the hazardous materials indemnity Agreement.

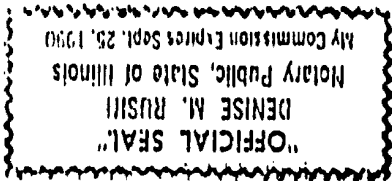
28. INDEMNIFICATION

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My Commission Expires:

Notary Public

Denise M. Rusin

of Illinois, 1988

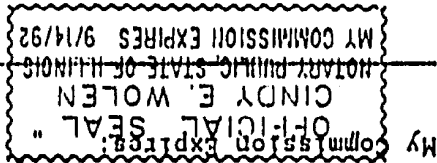
Given under my hand and official seal, this 23rd day

of said Company.
Instrument as his own free and voluntary act and as the free and voluntary act
person and severally acknowledged that they signed and delivered the said
name is subscribed to the foregoing instrument, appeared before me this day in
President and Secretary, respectively, of 223 West Ontario Corporation, whose
and personally known to me to be the
said County, in the State aforesaid, do hereby certify that James Ritzenberg
a Notary Public, in and for

By: James Ritzenberg, President

223 West Ontario Corporation

LESSOR:



Notary Public

Cindy E. Wolen

of Illinois, 1988

Given under my hand and official seal, this 23 day

Company.
his own free and voluntary act and as the free and voluntary act of said
severally acknowledged that they signed and delivered the said instrument as
to the foregoing instrument, appeared before me this day in person and
President and Secretary, respectively, of DPS, Inc., whose name is subscribed
and personally known to me to be the
said County, in the State aforesaid, do hereby certify that George Shinas
a Notary Public, in and for

By: George Shinas, President

DPS, Inc.

By: 223 W. Ontario Associates, Ltd.

BORROWER(S):

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