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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 any renewal, extension, amendment, modification, substitutions or replacements thereof ("New Lease") or by virtue of borrower's occupation of the premises, to levy or distraint 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 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.

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:

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

WHEREAS, Landlord wishes to lease the premises 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

WHEREAS, to secure payment and performance of all of Borrower's obligations and liabilities to Lender under the Loan Agreement or other security agreement ("Borrower's Liabilities"), Borrower has granted to Lender a leasehold mortgage and a first priority security interest on all of Borrower's equipment, inventory, building(s) and improvements and other personal property ("Collateral") located on the premises;

WHEREAS, Landlord is the Lessee under a certain lease covering the premises located at 223 West Ontario, Chicago, Illinois 60610, hereinafter referred to as the "underlying lease," wherein Faucher Bros. Carriage, Inc., an Illinois corporation, is the owner and Lessor of the premises;

WHEREAS, Lender and 223 W. Ontario Associates, Ltd., an Illinois Limited Partnership (hereinafter referred to as "Borrower" or "Sub Lessee") 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 A, instruments and documents (collectively the "Loan Agreements") providing for Lender to loan and/or advance monies to or for the benefit of Borrower.

W I T N E S S E I H

THIS LANDLORD'S AGREEMENT (this "Agreement"), executed and delivered as of this 1st day of November, 1988, by 223 West Ontario Corporation, an Illinois corporation ("Landlord"), in favor of Capital Bank and Trust, 4801 W. Fullerton, Chicago, Illinois 60639 ("Lender").

LANDLORD'S AGREEMENT
CONSENT AND WAIVER

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Signature of...

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8. Lessor will make all required payments under the underlying lease when due and payable, and in the event of any default by Lessor, Lessor shall provide Lender with copies of any notice of default. The Lessor hereby certifies that there are no agreements with respect to the premises covered by the lease or any part thereof, other than those contained in said lease, for the period covered by said lease, and that lease is valid and binding in accordance with its terms.

7. Lessor hereby consents to Sub-Lessor's assignment of its interest in the sublease to the Lender.

6. Lender may, without affecting the validity of this Agreement, amend or in any way modify the terms of payment or performance of any of Borrower's obligations to Lender, without the consent of Lessor and without giving notice thereof to Lessor. This Agreement shall continue in full force and effect until Borrower's obligations are paid and satisfied in full.

5. In the event of default by Borrower in the payment or performance of any of Borrower's obligations, provided Lender may do so without damage to the premises, Lender may remove the collateral or any part thereof from the premises in accordance with the terms and conditions of the Loan Agreements and applicable law appearing thereon without objection, delay, hindrance or interference by Lessor and in such case Lessor will make no claim or demand whatsoever against the collateral and Lessor further agrees that it will authorize and empower the Lender to enter upon the premises wherever said collateral may be and remove same from the premises.

4. Lessor will notify Lender in writing, at its principal place of business set forth above, if Borrower 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 Borrower to cure any such defaults. If the lease is in fact terminated, the Lender, or its nominee, shall be given the option to obtain a new lease for the remainder of the period of the prior lease upon curing all existing defaults. The Lender hereby also shall be allowed to exercise any extension or option of renewal option not exercised by the Lessor. Notice shall be sent by certified mail, return receipt requested, addressed to Lender.

3. Lessor 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 Lessor now has or hereafter may have or assert in or to the collateral by law, statute, the lease, any New Lease, other agreement or otherwise.

2. Lessor 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), 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 buildings and improvements superior to the right and interest of the owner as stated in paragraph 3 herein.

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OFFICIAL SEAL
BARBARA A. JANKOWSKI
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 5/31/92

By: [Signature]
Captcol Bank & Trust

SUBSCRIBED TO AND SWORN BEFORE ME
THIS 23rd DAY OF December, 1988.
[Signature]
NOTARY PUBLIC

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LENDER

OFFICIAL SEAL
DENISE M. RUSIA
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 5/31/92

My Commission Expires: [Signature]

Denise M. Rusia
Notary Public

Given under my hand and official seal, this 23rd day of December, 1988.

I, a Notary Public, in and for said County, in the State of Illinois, hereby certify that James Ritzenberg and [Signature] are personally known to me to be the President and Secretary Treasurer, respectively, of 223 West Ontario Corporation, whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Company.

Notary Public, State of Illinois
DENISE M. RUSIA

By: [Signature]
223 West Ontario Corporation
James Ritzenberg, President

LANDLORD

9. To Landlord's knowledge, no default, no event which with the passage of time or the giving of notice or both, could ripen into a default, exists or is occurring with respect to the lease at the time of execution of this Agreement.
10. This Agreement shall inure to the benefit of the successors and assigns of Lender and shall be binding upon the successors and assigns of Landlord, upon any successor owner or transferee of the Premises, and upon any purchasers, including any mortgagee, from the Landlord.
IN WITNESS WHEREOF, this Agreement has been duly executed and delivered as of the day and year specified at the beginning hereof.

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Construction Loan and Security Agreement

8901546 EXHIBIT A

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)", Capitol Bank & Trust, hereinafter called the "Lender" or "Bank", and 223 West Ontario Corporation, an Illinois corporation, hereinafter called the "Lessor."

RECITALS:

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."

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."

C. 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 "Lessee".

D. Borrower proposes to construct a 25,000 square foot extension on an existing restaurant. The extension, which is the project of this Construction Agreement, is being built on lot 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.)

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, if 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, if 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.

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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.

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.

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

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

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

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 estoppel certificates from the Lessor and Owner as are provided for in the Sub-Lease.

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

C. The foregoing representations and warranties, as well as the recital 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.

3. TERM; INTERIM FINANCING.

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.

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.

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

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Borrower agrees to promptly:

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 1% over Capital Bank and Trust's base rate, which is a floating variable interest rate.

B. Execute and deliver to the Lender a chattel leasehold 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 chattels, 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.

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

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.

C. Cause the execution and delivery to the Lender, as additional security for the payment of all funds advanced pursuant to this Agreement, a security assignment of Lessor's interest in all leases associated with premises, whether heretofore or hereafter made, and of all rentals therefrom, whether due or to become due, in form satisfactory to the Lender and a landlord's Agreement (Consent and Waiver) and estoppel certificates. The assignment of rent(s) and lease(s) shall, if the Lender so requests, be acknowledged by the tenant in question.

D. Deliver to the Lender such certified copies of directors' and stockholders' resolutions, trust agreements, partnership or joint venture agreements, directions to trustees, rent rolls, leases, sub-leases, certified copies of Articles of Incorporation, Certificate of Good Standing, Borrower(s) Attorney Opinion letter, 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.

5. BORROWER(S) COVENANTS; CONDITIONS

A. Borrower(s) expressly covenants and agrees to complete construction of the Project, lien free, 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 further covenants and agrees 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 permit access by the Lender's and Permanent Lender's, if applicable, duly authorized agents to the Premises at all times during working hours. Borrower further agrees not to amend, modify, revise, supplement or terminate the Permanent Commitment, if any, the Take-Out Agreement, if any, any partnership or joint venture agreement, land trust or corporation, relevant to this Project or any approved space lease, without the prior written consent of the Lender.

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B. 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 therefor) 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 as set forth in the schedules to be attached to such statement, (4) licenses and permits where separately itemized, (5) architect and engineer fees, legal fees, escrow fees, and fees for disbursing this loan, (6) off-site expenses with respect to sidewalks, streets, parking, driveways and utilities, (7) stand-by fees and title guarantee charges, (8) a contingency fund, and (9) any or all other expenses and costs in connection with the acquisition of the Premises, the operation of the Project, the cost of completion of the Project and/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 content satisfactory to 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) Subcontracts; 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 therein, 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 Chattel 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, covers 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 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 Inter report shall also contain said title company's Interim 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 chattel 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.

The foregoing policy or commitment shall also be approved by the Permanent Lender and Permanent Lender with such other evidence, in form satisfactory to the Lender, 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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(a) Builders completed value risk insurance against "all risks of physical loss", for the full insurable value of work performed and equipment and supplies and materials 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;

(b) 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 (1) full replacement value or the replacement form basis of said improvements, or (2) 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;

(c) 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);

(d) Worker's Compensation Insurance (including employer's liability in an amount satisfactory to Lender and it applicable, insurance covering claims of workers against employers arising under Federal law) covering all officers and employees of beneficiary and the contractors under the construction contracts and, it 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.

(e) Professional Liability Insurance covering the Engineer and all other architects and engineers involved in the Project;

(f) Flood insurance as required under the Flood Disaster Protection Act;

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

(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.

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

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An application for disbursement (A.I.A. Document 602 or 603 or other form acceptable to lender); current and updated title policy endorsements; waivers of lien, owner's, contractor's and subcontractor's sworn statements; in compliance with applicable mechanic's lien laws and as may be required by the Title 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 shall 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

(14) Advance for Construction Costs. Lender, (a) such advance for construction costs 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 content acceptable to the lender, with (i) a detailed construction statement, sworn to by the Borrower and General Contractor, setting forth all prime contracts and subcontractors and the amount of each and (ii) duplicate copies of all construction contracts shown in such sworn construction statement. At the time of each advance subsequent to the initial advance, Borrower shall furnish the lender with a revised sworn construction statement together with duplicate copies of any new contracts 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 encroachments on the premises owned by others, and disclosing all easements, 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; (ii) 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 (iii) 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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be made until the Plan of Subdivision and Conservation Easement have been duly signed by all parties thereto and recorded and only after all necessary permits for construction and completion of the work and improvements have been issued and are validly outstanding, and all other requirements of the Village or other governmental body, where required, are satisfied. Each such Advance for construction costs and disbursement shall not exceed ninety (90%) percent of the work performed to the date of the relevant Certificate as depicted thereon. Notwithstanding the foregoing, but provided no Event of Default has occurred, Lender will disburse the full amount of the payments due any contractor, subcontractor or material supplier performing any portion of the work if the Village, City, County or State engineer shall certify, unless waived by Lender, in form satisfactory to Lender, that said contractor, subcontractor, or material supplier's portion of the work or improvements are approved by the Village, City, County or State engineer and ready for acceptance by the Village. Lender may cause making Advances whenever it becomes necessary to do so in order that ten (10%) percent of the maximum total Advance for construction costs necessary to complete the work, as determined by Lender, will remain unadvanced until the conditions of the previous sentence or the conditions of Section 14(d) hereof have been satisfied. Lender need not make any Advance unless and until it has received and approved the Certificate and its consulting engineer, if one is retained, has approved the disbursement.

(b) At the time of final completion of the improvements, except for any funds which Lender determines are necessary to withhold to insure completion of all components of the work, as determined by the inspection by Lender, the retention shall be paid in accordance herewith so that one hundred (100%) percent of the cost of the completion of the improvements, except for any such withheld funds, shall be paid.

(c) The Lender may, at its option, make all such construction disbursements directly to the contractors, subcontractors or Materialmen entitled to the same; but in any event, if the Lender shall elect to make its disbursements to the Borrower or the General Contractor, in one lump sum, the Lender shall not be accountable or liable for the proper distribution of said monies to the parties entitled to the same. The Lender may also, at its option, and at Borrower's expense, elect to disburse the Loan proceeds through a construction Escrow with and through the Title Company. Borrower agrees to join as a party to any such escrow agreement and to cause the General Contractor to join as a party to such escrow agreement and to cause Title Company, and to execute and deliver to the Lender such other instruments requisite to the establishment of such an escrow, it and as required by the Title Company. Borrower agrees to comply and cause the General Contractor to comply with the requirements and conditions of any such escrow agreement (which shall be in addition to and not in substitution for the requirements and conditions contained in this Agreement) and to pay all fees and expenses of the Title Company in connection with the performance of its duties under said escrow agreement.

(d) Lender and Borrower agree that the final Advance for Construction Costs shall be advanced against Certificates described in Section (u) hereof, and, in addition thereto, upon satisfaction of the following additional conditions:

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- (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;
- (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;
- (3) Receipt by the Lender of record "as built" plans and specifications for the improvements certified to Lender by the Project Engineer;
- (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;
- (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;
- (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;
- (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.
- (e) Lender shall not be required to make Advances respecting any cost, other than construction costs or for acquisition of the Land.
- (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, statements of mechanics' liens, encumbrances, or other charge against the Project or any part thereof, together with a written explanation of the controversy;
- (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 have the right to 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 amount as Lender may reasonably require, but not less than one hundred fifty (150%) percent of the amount of 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

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(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,

(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.

(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.

(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.

(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 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, (i) 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 (ii) 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;

(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.

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

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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 construction 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.

(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 delineating 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 amounts therefore paid to each or any of them and the sums 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.

(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 statements (A.I.A. 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

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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, 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 Recordation. 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 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 first lien on, the Property and the Personal Property.

(26) Approval. Certified copies of any Annexation Agreement and/or ordinances, 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 consent, approval, license or permit 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 exists and that the Borrower, and the Beneficiary, if applicable, have, and will have upon completion of the Work, complied 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 Equilization Tax. Borrower hereby certifies that the loan to be disbursed hereunder is not subject to the Interest Equilization 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 Contractor or between the Contractor and subcontractors or materialmen, nor shall any extras be authorized or approved by Borrower, or new additional Contract Documents, subcontracts 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, contractors or material suppliers, the terms of this Agreement shall prevail and Borrower shall eliminate 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: (i) any sale, conveyance, assignment or other transfer of any shares, stock or other securities of or issued by Beneficiary; (iii) any sale, conveyance, assignment or other transfer of any share of stock of any corporation directly or indirectly controlling the Beneficiary which results in any material change in the identity of the individual previously in control of the Beneficiary; (iv) the grant of a security interest in any share of stock of any corporation

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: (i) 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 any share of stock of any corporation directly or indirectly controlling the Beneficiary which results in any material change in the identity of the individual previously in control of the Beneficiary; (iv) the grant of a security interest in any share of stock of any corporation

A. Sell, convey, assign, pledge, hypothecate, encumber or otherwise transfer title to, or any interest in, or place of any lien upon, or grant any security interest in, the Property, Personal Property, any Contract, any interest of Borrower in the Project, or any portion of any entity owning any interest therein (whether voluntary or by operation of law) without the Mortgagee's prior written consent).

8. PROHIBITION ON SALE OR FINANCING

Borrower agrees that it will not assign or encumber any of its rights under this Agreement or under the Permanent Commitment, if any, or under the various leases, except insofar as permitted by this Agreement, 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.

7. ASSIGNMENTS

Default), the Lender may deduct, from any payment to be made to or for the account of Borrower under this Agreement, and Borrower(s) agree to pay, any amount necessary for the payment of any expenses relating to the examination of title to the Premises, including, without limitation, the cost of title opinions, abstracts, title insurance policies, surveys, revenue stamps and recording fees, and other expenses incurred in the procuring and making of said loan, including, without limitation, loan service fees heretofore referred to, fees and expenses due the Lender's attorneys, fees due the Lender's inspection engineer, or consultant, accrued interest on the loan, and any charges incurred in the payment of any insurance premium, encumbrance, tax, assessment, or other charge or lien upon the Premises, and any amounts necessary to complete the construction of the Project, or to satisfy or discharge any mechanics' liens thereon, and may apply such amounts in hereunder, and all sums so applied shall be deemed advances under this Agreement, secured by the aforesaid security; provided, that the foregoing shall not prevent Borrower (later first indemnifying the Lender to its satisfaction) from contesting any such tax, assessment, mechanics' liens or other encumbrance upon the Premises or the Project, and the Lender shall not pay any such expense if such payment would prejudice any such legal proceedings.

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E. If any representation or warranty made herein by Borrower or otherwise 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

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

C. If, for any reason whatsoever, there shall be an uncured 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

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

A. 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 premises mortgaged hereby, and impair the rights of the Lender granted hereunder.

or the granting or creation of any lien upon or security interest in, the beneficial interest under or power of direction under the Trust, the exercise its remedies; (v) any sale, conveyance, assignment or other transfer, the Beneficiary if the secured party holding such security interest would materially change in the identity of the individuals previously in control of directly or indirectly controlling the Beneficiary which could result in a

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F. If the Project, or any material part thereof, is materially damaged or destroyed by fire or other casualty and the loss is not, in the Lender's opinion, adequately covered by insurance actually collected or in the process of collection, and if Borrower shall fail to deposit the deficiency with the Lender; or

G. If (1) actual physical work on the Project, of a substantial nature, in the opinion of the Lender, shall be abandoned or shall be unreasonably delayed, or be discontinued for a period of thirty (30) days, in each instance, for reasons other than those beyond the control of Borrower, or (2) construction shall be so delayed for any reason whatsoever that the completion of the Project cannot be accomplished, in the judgment of the Lender, on or before April 30, 1989, or as such date may be extended from time to time with the approval of the Lender provided said delay is not due to force majeure; or

H. If Borrower makes an assignment for the benefit of creditors; or partitions or applies to any tribunal for the appointment of a trustee of receiver for itself or for any substantial part of its assets; or commences any proceedings under any bankruptcy, arrangement, insolvency, readjustment of debt or statute of any jurisdiction, whether now or hereafter in effect; or if any such partition or application is filed or any such proceedings are commenced, and Borrower by any act indicates its approval thereof, consent thereto, or acquiescence therein, or an order is entered appointing any such trustee or receiver, or adjudicating Borrower bankrupt or insolvent, or approving the partition in any such proceedings; and such order remains in effect for more than sixty (60) days or such proceedings shall not be dismissed within ninety (90) days; and such order remains undischarged and unpaid for a period in excess of sixty (60) days (provided that, during such 60 or 90 day period, as the case may be, the Lender in its discretion, may refuse to make any disbursement of funds under this Agreement); or

I. If Borrower fails to comply with any requirement, relative to the premium, of any Governmental authority having jurisdiction within thirty (30) days after notice in writing of such requirement shall have been given to Borrower; or

J. If Borrower fails either to deposit with the Lender the amount of any deficiency anticipated by the Lender pursuant to paragraph 5B(22) of this Agreement within thirty (30) days after written request for such deposit shall have been given to Borrower; then, and in any such event, in addition to all remedies conferred upon the Lender by law and by the terms of any document delivered to the Lender herunder, evidencing or securing (in whole or in part) the loan to Borrower, take any or all of the following actions, concurrently or successively, by giving at least five days written notice to Borrower by certified mail: (1) declare the Note to be, and the Note shall thereupon become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Note to the contrary notwithstanding; (2) terminate the agreement of the Lender to extend credit to or extend credit of any kind herunder, whereupon the commitment of the Lender to extend credit of any kind herunder shall terminate; (3) terminate the agreement of the Lender to extend credit of any kind herunder, whereupon the commitment shall terminate; (4)

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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 taking new contracts with either the name of existing contracts 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 liabilities 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 amount 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:

(1) Foreclose the lien of the Mortgage or other mortgage instrument, if any.

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

(3) Exercise such of the rights and remedies granted under any Note, any Mortgage and/or Assignments of Loans, 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.

(4) Sue any one or more of the Personal or Corporate Guarantor(s), if any, or any other guarantor(s) of any of the Obligations, and exercise such of the rights and remedies under any such agreements as lender may choose to exercise.

(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 attorney's 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.

(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 of 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

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Options, 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 days, undersigned shall pay to Lender a late charge of five cents (\$.05) for each dollar so overdue in order to delay 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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(5) After the earlier of the Completion Date or the final Advance for Construction Costs, an amount reasonably determined by Lender to complete the Work and Improvements, but the foregoing shall not imply Lender's

(4) Until paid, the amount of the Advances for Land and cost or Land Acquisition, if applicable, is applicable.

(3) An estimated amount for construction extras and contingencies.

(2) An estimated amount for the payment of fees and expenses of any architect and/or engineer required by Lender to examine the Improvements and the Plans and Specifications, cost estimates, Contract and and construction payoffs as well as to make periodic inspections of the construction of the Improvements.

(1) The amount of Lender's attorney's fees not otherwise paid on the Closing Date.

A. There shall be reserved from the proceeds of the Loan Amount, if required by Lender, before the first disbursement and thereafter throughout the term of the Loan, to or for the benefit of the Borrower, sufficient monies as determined or estimated by Lender from time to time to pay and discharge all or any of the following items, to-wit:

10. RESERVES.

(16) File one or more suits at law or in equity to collect any of the Obligations all in Lender's sole discretion.

(15) Lender shall not by omission or act be deemed to waive any of its rights or remedies under the Note(s) unless such waiver be in writing and signed by Lender, and then only to the extent specifically set forth therein. A waiver in connection with one event shall not be construed as continuing or as a bar to or waiver of any right or remedy in connection with a subsequent event.

(14) Failure of Lender, for a period of time or on more than one occasion, to exercise its option to accelerate the maturity date on the Note(s) shall not constitute a waiver of the right to exercise the same at any time during the continued existence of the Default or in the event of any subsequent Default in the Note(s).

(13) Lender's remedies under the Note(s), any Mortgage, and any of the other Loan Documents shall be cumulative and concurrent and may be pursued singly, successively or together against any or all of the Borrower(s), and any other Obligor(s) or Guarantor(s), the real estate described in any Mortgage, and any other security described in the Loan Documents or any portion or combination of such real estate and other security.

(c) to represent Lender in monitoring the loan(s) evidenced by the Note(s) or any renewal, restructuring, amendment or the like applicable thereto then Borrower(s) shall pay to Lender all reasonable attorneys' fees and expenses incurred or determined to be due in connection therewith, in addition to all other amounts due hereunder.

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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 set aside 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 such disbursement, 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 sums for which the Reserves were set aside, or by reimbursing Borrower for the same. Lender shall produce satisfactory evidence of such payments. Until any such Reserve is used or disbursed 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 Reserves) 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 costs necessary to complete the Project of any portion 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 as aforesaid. 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 disbursement.

B. The parties hereto covenant and agree that after setting aside the aforesaid reserves (hereinafter referred to collectively as the "reserves" and individually as a "Reserve"), the net 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 net 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 net 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 interim 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 rights, 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, may have or hereafter may have to any action by Lender in enforcing the note or the collateral and satisfy 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, constitute a waiver of the rights of the Lender to 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 West Ontario 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: Capital 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 to business days after mailing by United States certified mail, return receipt requested, or when delivered in person. Unless specifically requested 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 58(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 Undersigned 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 Undersigned 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 anticipation 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 Undersigned nor any of the other Obligor(s) shall have any action 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

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 let contracts 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 should such additional amount for the account of Borrower, which may, advance shall be considered to be and shall be a separate and additional loan amounts shall be considered 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 and 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 actions.

19. DISCLAIMERS OF LENDER

Representatives of Lender have the right to enter upon the property at all times after execution hereof, and in 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 any provision of this Agreement.

27. HEADINGS

Whenever provision is made herein for the approval or consent of Lender, or that any matter be to 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 rights, 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), Lessor, and Guarantor(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 integrate 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 Loan 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 be in the opinion of Lender be necessary or advisable to give full force and effect to such disposition.

22. PARTICIPATION OF LOAN

herein or the disbursement 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 or enforcing 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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UNOFFICIAL COPY

Property of Cook County Clerk's Office

OFFICIAL SEAL
BARBARA A. PANKOWSKI
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 12/31/98

SUBSCRIBED TO AND SWORN BEFORE ME
THIS 23rd DAY OF November 1988
Barbara A. Pankowski
NOTARY PUBLIC

89016466

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.

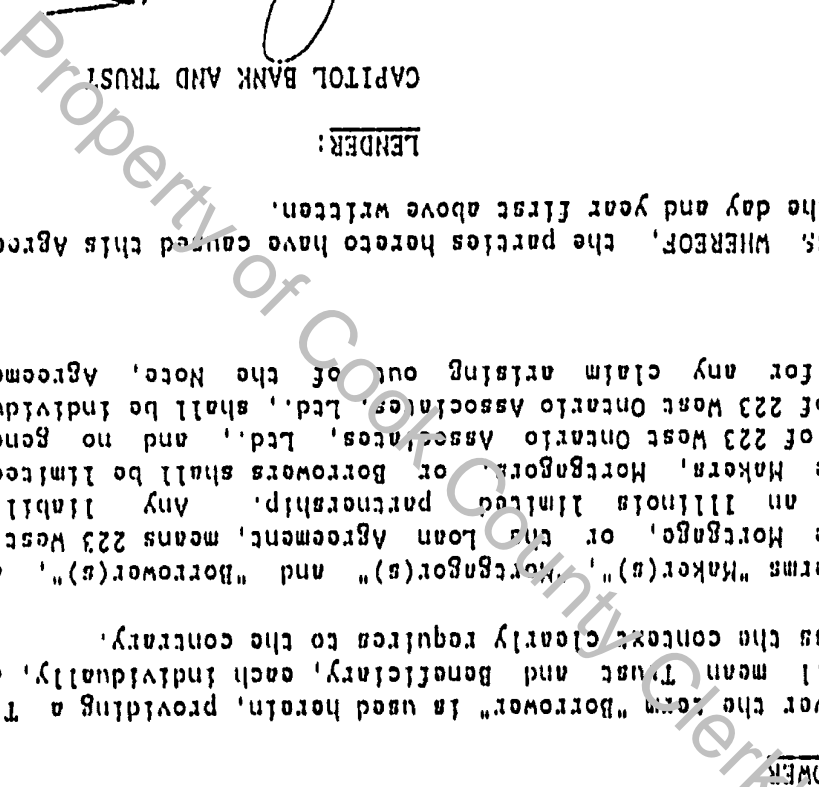
h. The terms "Maker(s)", "Mortgagor(s)" and "Borrower(s)", as used in the Note, the Mortgage, or the Loan Agreement, means 223 West Ontario Associates, Ltd., an Illinois limited partnership. Any liability or obligation of the Makers, Mortgagors, or Borrowers shall be limited to the partnership assets 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, damage, expense, cost 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 lawsuit, 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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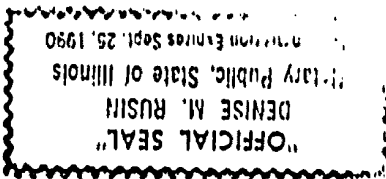
Property of Cook County Clerk's Office

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89016466



My Commission Expires:

Notary Public

Denise M. Rusin

of *Winnetka*, 1988.

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

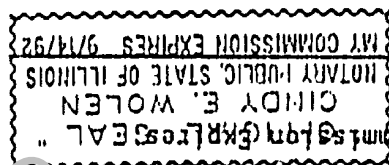
of said Company.
instrument as his own free and voluntary act and as the free and voluntary act
person and severally acknowledged that they signed and delivered the said
name is subscribed to the foregoing instrument, appeared before me this day in
President and Secretary, respectively, of 223 West Ontario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

Secretary

By: *James Ritzenberg*
James Ritzenberg, President

223 West Ontario Corporation

LESSOR:



My Commission Expires 9/14/92

Notary Public

Cindy E. Wolen

of *Winnetka*, 1988.

Given under my hand and official seal, this 23rd 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
and Secretary, in and for

Secretary

By: *George Shinas*
George Shinas, President

DPS, Inc.

By: *George Shinas*
223 W. Ontario Associates, Ltd.

BORROWER(S):

UNOFFICIAL COPY

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89016-156

Property of Cook County

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 subdivided 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