

PARTY WALL AGREEMENT

95-0486

THIS PARTY WALL AGREEMENT (this "Agreement") is made and entered into as of the 14th day of August, 1995, by and among STARLITE TECHNICAL SERVICE, INC., an Illinois corporation ("STARLITE"), and JAMES T. BIELARZ AND ROSEMARY BIELARZ ("BIELARZ").

RECITALS:

WHEREAS, STARLITE is the owner of real estate legally described in Exhibit "A" attached hereto and made a part hereof, and commonly known as 1319 W. North Ave., Chicago, Illinois ("Parcel 1"); and

WHEREAS, BIELARZ is the owner of real estate legally described in Exhibit "B" attached hereto and made a part hereof, and commonly known as 1317 W. North Ave., Chicago, IL ("Parcel 2"); and

WHEREAS, the building located at 1317-1319 W. North Ave. on Parcel 1 and Parcel 2 (the "Building") is currently a contiguous building, unseparated by a common wall; and

WHEREAS, it is in the interest of Starlite and Bielarz to cooperate and coordinate and set forth the respective rights and obligations of each owner with respect to the erection, and subsequent maintenance of a common wall dividing the Building as set forth in the ALTA Survey dated May 28, 1995. A copy of the ALTA Survey is attached hereto and made a part hereof as Exhibit C.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties covenant and agree for themselves, and their heirs, successors, and assigns, as follows:

1. Erection of Wall. The parties shall consult with an architect, if necessary, to determine the required specifications of the party wall. The parties shall obtain estimates of the cost of erection of the party wall based upon the agreed specifications from not less than two contractors. The parties shall review the contractor's estimates and proposals, and reach an agreement with one of the contractors to erect the wall. Bielarz shall supervise and direct the construction of the party wall, the total costs of such construction shall be borne equally

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by the parties. The wall shall be built at the location specified in the Survey which divides Parcel 1 and Parcel 2.

The party wall shall be built in strict accordance with all applicable building codes and regulations and shall be constructed in a workmanlike manner, of good material suitable for the purpose for which used.

2. Additional Improvements. The parties agree to equally split all other costs associated with physically dividing the Building, including, but not limited to separating lines and meters for water, sewer, gas and electric service, demolition, construction and permit costs. Notwithstanding anything to the contrary provided for herein, Bielarz shall be solely responsible for the costs associated with installing utilities and utility meters, including electric, gas, telephone, water and sewer as necessary for Bielarz's use of Parcel 2.

3. Use of Party Wall. The party wall of the Building, dividing Parcel 1 and Parcel 2, shall be used to support the structural integrity of the Building, neither party, nor any agent, tenant, subtenant, contractor, subcontractor, employee or invitee of such party, shall modify such party wall to cause any weakening offered by this wall.

4. Temporary Easements for Construction, Repairs and Maintenance.

(a) During the period of construction of the party wall and all other improvements contemplated herein, each party grants to the other party, its successors and assigns, and its architects, contractors, subcontractors, agents, employees, and others engaged in performing such construction work, temporary easements to use that part of the real property and Building owned by the other party hereto to the extent reasonably necessary for the purpose of performing the construction work in question; provided, however, that (i) these temporary easements shall terminate when construction of the improvements shall be completed; (ii) these temporary easements shall not extend beyond the time or area determined by the architect or contractor to be reasonably necessary under good construction practices; and, (iii) the party utilizing these temporary easements to go upon that part of the real property and Building owned by the other party hereto shall complete such construction in a workmanlike manner with as little interference as is practicably possible, in compliance with all applicable ordinances and regulations and diligently proceed to restore that part of the real property and Building owned by the other party to the same condition as it existed before such construction work commenced, unless such condition upon completion of the construction work shall be in conformance with plans for the improvements constructed, or under construction, if any, on such part of the real property and Building. Notwithstanding anything herein to the contrary, these

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temporary easements shall be granted anew, upon the same conditions and limitations, if any part of the improvements shall be damaged or destroyed and repair or reconstruction of such damaged or destroyed improvements is to be undertaken; provided, however, that such temporary easements shall remain in effect for a reasonable time only, until such repair or reconstruction is completed in a diligent and timely fashion.

(b) Each party shall have the right and easement to enter the improvements and that portion of the real property and Building owned by the other party hereto to the extent reasonably necessary to maintain and repair that portion of the improvements constructed on its own portion of the real property and Building. Such rights and easements are for the benefit of the parties hereto, their successors and assigns, invitees, licensees, employees and contractors. Such easements are granted upon condition that such maintenance and repairs are conducted in a reasonable and timely fashion; time is of the essence hereof. Upon completion of such repairs or maintenance, the party utilizing these easements to enter that part of the real property and Building owned by the other party shall restore that part of the real property and Building owned by the other party to the same condition as it existed before such repairs or maintenance.

(c) Each party, exercising the temporary or permanent rights and easements granted in this Section 4 or in Section 5 hereof to go upon that part of the real property and Building owned by the other party, covenants and agrees that it shall:

(i) keep that part of the real property and Building owned by the other party, and the improvements located thereon, free and clear of any and all liens arising out of or claimed by reason of any work performed, materials furnished or obligations incurred by the party exercising such temporary rights and easements, and such party shall indemnify and hold harmless the other party from any and all such liens or claims of lien and all costs and expenses (including reasonable attorneys' fees) incurred by reason thereof; and

(ii) indemnify and save harmless the other party from and against any and all claims, actions, liabilities and expenses (including reasonable attorneys' fees) suffered or incurred in connection with loss of life, personal injury and damage to property, or any of them, occasioned wholly or in part by any act or omission of such indemnifying party, its agents, employees, contractors or subcontractors, while exercising such temporary rights and easements.

5. Easements for Utilities. There is hereby granted in favor of each party hereto the right and easement to enter that portion of the real property and Building owned by the other party for the installation, operation, maintenance, repair, replacement and relocation of utility facilities for the benefit

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of the party exercising such rights and easements; provided, however, that (except in case of emergency) the party exercising such rights and easements shall first provide the other party with written notice of such installation, operation, maintenance, repair, replacement or relocation, furnish copies of all plans therefor and bear all of the costs and expenses of such installation, operation, maintenance, repair, replacement or relocation. Each party shall be free to relocate any easements and facilities on its portion of the real property and Building and benefiting the other party by notifying the other party in writing of its intention to relocate an easement or facility at least thirty (30) days before such relocation and bearing the full costs and expenses of such relocation.

6. Minimal Interference. In fulfilling obligations and exercising rights under this Agreement and in constructing, repairing or maintaining any improvements on its portion of the real property and Building, each party shall have the right to enter that part of the real property and Building owned by the other party, but in doing so shall use reasonable efforts to keep interference with the property and operation of the other party to a minimum and, to that end, will (except in cases of emergency) give to the other party reasonable advance notice of work which may interfere with the property or operations of the other party and will (except in cases of emergency) arrange with the other party reasonable and definite times at which such work will be done.

7. Easements for Encroachments. There is hereby granted in favor of each party, its successors and assigns, an exclusive easement for the operation and maintenance of the improvements which hereafter may encroach upon that portion of the improvements and the real property and Building owned by the other party, but only to the extent that said encroachments are caused by unintentional minor deviations in construction thereof or the subsequent shifting or settlement of such improvements and only to the extent that such encroachments do not cause damage to, or impede or impair the use of, the improvements on that portion of the real property and Building owned by such other party.

8. Property Benefited. The rights and easements granted in this Agreement are for the benefit of and appurtenant to Parcel 1 and Parcel 2 and shall be deemed to run with the land.

9. Damage to and Repair of Party Wall and Improvements. Each party hereto shall take such actions as may be reasonably necessary to keep that portion of the Party Wall and additional improvements located on its portion of the Building in such condition and repair that there will be no material adverse effect upon the easements and rights granted herein to the other party. Without limitation of the foregoing, it is mutually understood and agreed that:

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(a) Starlite shall own and be solely responsible for the maintenance, repair and replacement of all of the improvements, and any repairs to or replacements thereof, located on Parcel 1. Starlite covenants and agrees that it shall keep all of the Improvements owned by it, and replacements or additions thereto, in first-class condition and repair. Notwithstanding the foregoing, Starlite shall not be solely responsible for the maintenance, repair and replacement of those utility facilities located on Parcel 1 which solely benefit Parcel 2 or jointly benefit both Parcel 1 and Parcel 2. If such utility facilities solely benefit Parcel 2, Bielarz shall be entirely responsible for the maintenance, repair and replacement of such utility facilities. If such utility facilities jointly benefit both Parcel 1 and Parcel 2, then Starlite shall have the primary responsibility for maintaining, repairing and replacing such utility facilities and the costs and expenses of such maintenance, repairs and replacements shall be fairly apportioned between Starlite and Bielarz.

(b) Bielarz shall own and be solely responsible for the maintenance, repair and replacement of all of the improvements, and any repairs to or replacements thereof, located on Parcel 2. Bielarz covenants and agrees that it shall keep all of the improvements owned by it, and replacements or additions thereto, in first-class condition and repair. Notwithstanding the foregoing, Bielarz shall not be solely responsible for the maintenance, repair and replacement of those utility facilities located on Parcel 2 which solely benefit Parcel 1 or jointly benefit both Parcel 1 and Parcel 2. If such utility facilities solely benefit Parcel 1, Starlite shall be entirely responsible for the maintenance, repair and replacement of such utility facilities. If such utility facilities jointly benefit both Parcel 1 and Parcel 2, then Bielarz shall have the primary responsibility for maintaining, repairing and replacing such utility facilities and the costs and expenses of such maintenance, repairs and replacements shall be fairly apportioned between Bielarz and Starlite.

(c) If any part or all of the party wall or related improvements are damaged or destroyed by fire or other casualty, either party shall have the right to replace or repair as necessary the party wall and related improvements. The cost of such replacement or repair shall be borne solely by the party carrying it out if that party alone intends to continue use of the Building. If both parties intend to continue to use the Building, the cost or replacement or repair shall be divided equally between the parties.

10. Insurance. Each party shall keep its portion of the Building insured against loss of damage by fire, windstorm, earthquake and such other risks, casualties and hazards as might be insured under "all risk" and "extended coverage" insurance policies, in an amount at least equal to the guaranteed full

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replacement value thereof, with a co-insurance clause of not less than eighty percent (80%), excluding the cost of the excavation and foundations. Each party shall maintain comprehensive general liability insurance against claims for injury to persons (including death) and property damage occurring in or upon its portion of the Building or that portion of the improvements thereon or in connection with the easement rights granted herein to such party, in such amounts as would be carried from time to time by prudent owners of similar buildings in the Chicago metropolitan area, but in all events to afford not less than \$1,000,000 combined single limit coverage, naming as additional insureds all parties having an interest in the Building as their interests may appear (including any first mortgagees). Each such policy shall provide that the acts of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under such policy and shall be endorsed with a clause which reads substantially as follows: "This insurance shall not be invalidated should the insured waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the property described herein." Evidence of such insurance or copies of all policies shall be promptly delivered to all such insured parties upon request. All such policies shall provide that they shall not be cancelable except upon thirty (30) days prior written notice to the parties insured and to the other party to this Agreement, and, to the extent obtainable, that the right of subrogation against each such insured party shall be waived by the insurer.

11. Lien Claims. If, by reason of labor or material furnished or claimed to have been furnished to or on behalf of either party hereto (the "Benefited Party"), any mechanic's lien or similar lien shall be placed at any time or times upon any part of the Land owned by the other party hereto (the "Burdened Party"), the Benefited Party covenants and agrees that it shall cause the same to be discharged of record within thirty (30) days after the earliest date on which the Benefited Party first has knowledge of the filing. If the Benefited Party shall fail to discharge such lien within such thirty (30) day period, then, in addition to any other right or remedy available to the Burdened Party, the Burdened Party may contest or discharge the lien either before or after investigating the recording thereof. All amounts expended by the Burdened Party to contest or discharge such lien shall be payable by the Benefited Party to the Burdened Party on demand. The Benefited Party shall not be required to pay or discharge any such lien within such thirty (30) day period if the Benefited Party commences within such period, and thereafter proceeds diligently in good faith, to contest the lien by appropriate proceedings. Before the Benefited Party commences such contest, it shall give the Burdened Party written notice of its intention to do so. If such contest proves unsuccessful, the Benefited Party shall forthwith pay the full amount of the lien unsuccessfully contested, including any interest, penalties and

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costs. If the Benefited Party fails to pay forthwith the amount of any lien unsuccessfully contested or fails to prosecute any such contest diligently in good faith, or if, notwithstanding such contest, the Burdened Party shall deem the lien in danger of foreclosure, then, in any such event, the Burdened Party may pay the amount of the lien being contested, including any interest, penalties and costs. Any amounts paid by the Burdened Party shall be payable to it from the Benefited Party on demand.

12. Indemnities. Starlite and Bielarz mutually covenant and agree to indemnify and save harmless the other from and against any and all claims, actions, liabilities and expenses (including reasonable attorneys' fees) suffered or incurred in connection with loss of life, personal injury and damage to property, or any of them, occasioned wholly or in part by any act or omission of such indemnifying owner, its tenants, invitees, or occupants, or the subtenants, agents, contractors, subcontractors or employees of such owner or such owner's tenants.

13. Not Partners. Nothing contained in this Agreement shall be construed to make Starlite and Bielarz partners or joint venturers or to render any of said parties liable for the debts or obligations of the other.

14. Non-Recourse. Notwithstanding anything to the contrary contained herein, neither party shall have any personal liability arising out of this Agreement. Any and all liability a party to this Agreement may have to the other party arising out of the terms and conditions of this Agreement, shall be limited to, and satisfied from, the Building and the proceeds thereof and any and all rents arising therefrom.

15. Governing Law; Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. If any provision of this Agreement, or the application thereof to any persons or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each remaining provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

16. Modification. No agreement shall be effective to add to, change, modify or discharge this Agreement, in whole or in part, unless such agreement is in writing and signed by the parties hereto.

17. Duration of the Agreement. This Agreement shall continue in effect for as long as the party wall remains standing and in use subject to the right to replacement granted above, and shall become a condition of transfer of any interest in the real property conveyed.

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18. Term. This Agreement shall bind and inure to the benefit of the parties and their respective heirs, legal representatives, and assigns. It shall continue as covenant running with the land as to each individual building on Parcel 1 and 2. Nothing contained herein shall be construed as a grant by either party or their respective rights to title to the land on which the walls or any extension thereof stands.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

**OWNERS:**

Parcel 1-1319 W. North Ave., Chicago, IL

STARLITE TECHNICAL SERVICES, INC., an Illinois corporation

By: Satwant S. Sodhi  
SATWANT S. SODHI, President

**OWNERS:**

Parcel 2-1317 W. North Ave., Chicago, IL

James T. Bielarz  
JAMES T. BIELARZ

Rosemary Bielarz  
ROSEMARY BIELARZ

This document was prepared by  
and when recorded, return to:

Herbert J. Linn  
Pedersen & Houghton  
161 North Clark Street  
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Chicago, Illinois 60601

PIN: 17-05-104-005

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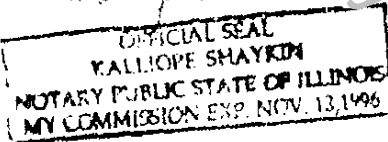


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STATE OF ILLINOIS )  
COUNTY OF Cook ) SS

I, Kalliope Shaydon a Notary Public  
in and for said County, in the State aforesaid, DO HEREBY CERTIFY  
THAT MARGO L. BRUCE President of  
Starlite Technical Service, Inc. and \_\_\_\_\_  
Secretary of said corporation, who are personally  
known to me to be the same persons whose names are subscribed to  
the foregoing instrument, as such \_\_\_\_\_ President and \_\_\_\_\_  
Secretary, respectively appeared before me this day in person,  
and acknowledged that they signed and delivered the said  
instrument as their own free and voluntary act and as the act of  
said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 14th day of  
August, 1995.



Kalliope Shaydon  
Notary Public

My Commission Expires: 11-13-96

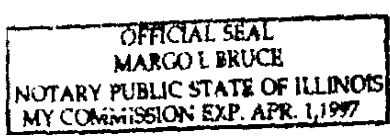
STATE OF ILLINOIS )  
COUNTY OF Cook ) SS

I, MARGO L. BRUCE, a Notary Public  
in and for said County, in the State aforesaid, DO HEREBY CERTIFY  
THAT James T. Bielarz and Rosemary Bielarz, 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  
acknowledged that they signed and delivered the said instrument  
as their own free and voluntary act for the uses and purposes  
therein set forth.

GIVEN under my hand and notarial seal, this 14th day of  
August, 1995.

Margo L. Bruce  
Notary Public

My Commission Expires:



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