

the state in which the Premises are located, (iii) it has the corporate power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by this Agreement, the Note and the Mortgage, and (iv) the execution and delivery of and the carrying out of the transaction contemplated by this Agreement, the execution and delivery of the Note and the Mortgage, and the performance and observance of the provisions of all of the foregoing, have been duly authorized by all necessary corporate and stockholder actions of Mortgagor and will not conflict with or result in a breach of the terms or provisions of any existing law or any existing rule, regulation or order of any court or governmental body or of the Certificate of Incorporation or the By-Laws of Mortgagor.

(r) The Financial Statements heretofore delivered to the Lender, are true and correct in all respects, have been prepared in accordance with generally accepted accounting practice, and fairly present the respective financial conditions of the subjects thereof as of the respective dates thereof, no materially adverse change has occurred in the financial conditions reflected therein since the respective dates thereof and no additional borrowings have been made by the Mortgagor since the date thereof other than the borrowing contemplated hereby or approved by the Lender.

(s) There are no actions, suits or proceedings pending, or to the knowledge of the Mortgagor threatened, against or affecting it or the Premises or involving the validity or enforceability of the Mortgage or the priority of the lien thereof, at law or in equity, or before or by any Governmental Authority, except actions, suits and proceedings fully covered by insurance or which, if adversely determined, would not substantially impair the ability of the Mortgagor to pay when due any amounts which may become payable in respect of the Note; and to the Mortgagor's knowledge it is not in default with respect to any order, writ, injunction, decree or demand of any court or any Governmental Authority;

(t) The consummation of the transactions hereby contemplated and performance of this Agreement and the Mortgage will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, by-laws or other instrument to which the Mortgagor is a party or by which it may be bound or affected.

(u) To furnish to the Lender, as and when required by Lender, evidence and proof acceptable in Lender's sole judgment and discretion that the Mortgagor and Contractor have the financial solvency and ability to and will obtain all necessary materials, labor services, and other services, as and when required for the completion of development and for the completion of construction of said buildings and all improvements in accordance with the approved plans and specifications of the firm purchase commitment, and the requirements of all governmental agencies having jurisdiction over said property.

(v) That the Lender and/or its agents shall at any time during the period of this agreement have the right to inspect all books, contracts, subcontracts, and records of the Mortgagor and/or Contractor, (including general and sub-contractors involved in any on-site and off-site work) relating to the subject property.

(w) To submit to the Lender, as often as demanded by Lender, and within seven (7) days after demand, a written summary of all on-site and off-site improvements remaining to be completed, together with the itemized costs thereof, executed and verified by Mortgagor and Contractor.

(x) Mortgagor shall duly and punctually comply with and perform all the terms, covenants, conditions and provisions necessary to close and consummate the mortgage referred to in the firm purchase commitment of the Long Term Lender, if any, and said commitment shall not be amended, modified or terminated without the consent of Lender and shall be kept in good standing, free of any default, condition or event which with the giving of notice or the lapse of time or both would constitute a default under said commitment.

(y) The Mortgagor hereby assigns to the Lender the proceeds of said permanent loan to the extent of any indebtedness due or owing to the Lender under said construction mortgage and this Agreement at the time said permanent loan is closed.

(z) In the event the Mortgagor fails to construct and complete said building or buildings and improvements in accordance with the terms and provisions of this Agreement, the Mortgagor hereby assigns to the Lender the right to possess and use the Plans and Specifications for the purpose of completing said building or buildings and improvements, and shall furnish at the execution of this Agreement the consent of the Architect to such Assignment, with respect to each individual building unit.

(aa) Mortgagor shall furnish to Lender prior to final disbursement of loan funds, but not later than thirty (30) days after the completion of the improvement, (i) the original permanent certificate of occupancy issued by the Governmental authority having jurisdiction of the Mortgaged Property and all other necessary consents and approvals of any Governmental Boards, Bureaus or Departments having jurisdiction of the Mortgaged Property, (ii) all necessary certificates and approvals of the appropriate Board of Fire Underwriters or other similar body acting in and for the locality in which the Premises are situated, and (iii) all required licenses and agreements in respect of any vault space or easements extending beyond the boundary lines of the Premises.

(bb) If the improvement is partially or totally damaged or destroyed by fire or any other cause, any monies received as payment for any loss under any such insurance shall be paid over to the Lender, and shall be applied, at the option of the Lender, either to the pre-payment of the mortgage note due Lender, or Mortgagor shall immediately proceed with the restoration thereof and diligently prosecute the work of restoration to completion, provided, however, that Lender shall make available to Mortgagor as such restoration progresses, in advances to be made based on certifications of the Supervising Engineer, the proceeds of such insurance actually paid to Lender in respect of such damage or destruction of the improvement, but no part of the cost of such restoration shall be made the basis of any application for advances under this Agreement. Mortgagor shall pay promptly when due all bills and other obligations incurred by Mortgagor for the cost of construction of the improvements or for any restoration pursuant to the provisions of this Agreement.

or upon demand by Lender,

3. Before any disbursements out of the loan fund are advanced by Lender/Borrower, as may be required by Lender, shall either deposit with the Lender, or a person or firm selected or approved by Lender to disburse all proceeds of the loan fund (hereinafter sometimes called "Disbursing Agent"), an amount equal to the difference between the net proceeds of the Construction and/or Development loan to be advanced by Lender during the progress of construction and/or development and the estimated cost of construction and/or development and additional costs included in the project cost breakdown report submitted by Borrower to and approved by Lender, or Borrower shall first expend its own funds in an amount equal to said difference. Borrower's funds, together with the proceeds of the loan to be advanced by Lender, as evidenced by Borrower's Promissory Note payable to Lender as hereinbefore identified, shall constitute the loan fund to be disbursed by the Disbursing Agent for the account of the Borrower in the manner herein provided. Unless otherwise provided, all sums deposited by the Borrower as part of said loan fund shall be the first monies disbursed out of said loan fund. If the Borrower's deposit is not required by Lender, then Borrower shall provide Disbursing Agent with paid bills and lien waivers, or other evidence of payment satisfactory to Lender, representing the Borrower's own funds first advanced during construction and/or development to the extent of the difference between the amount of the loan and the estimated cost of construction and/or development before the disbursement of any of the proceeds of the loan to be advanced by Lender. With reference to all Loan Fund advances, Mortgagor agrees as follows:

(a) No payment nor advance need be made by Lender or to the Disbursing Agent, for the Borrower, unless and until all of the conditions of the Commitment letter referred to in Paragraph 1 of this Agreement and all of the conditions contemplated by Lender to be performed prior to the making of first advance under this Agreement have been performed, nor shall any payment or advance be so made unless and until the Lender is furnished by the Borrower with a Contractor's cost breakdown of the job and additional costs itemizing total project breakdown on forms approved by the Lender. Based upon Contractor's cost breakdown approved by Lender or its designated or approved construction and/or development costs analyst, the proceeds of the loan fund shall be advanced not more frequently than once a month as construction and/or development progresses, unless otherwise agreed to by Lender.

(b) Borrower agrees to hire a Supervising Engineer who shall be approved by the Lender, and Borrower shall pay for his services, including inspecting the progress of construction and/or development. The Supervising Engineer should certify to the Lender and to the Disbursing Agent as to the progress of construction and Contractor's compliance with the plans and specifications. The Supervising Engineer's approval shall be required by the Disbursing Agent before any loan advances are submitted to

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