

advanced by Lender to complete development and/or construction of said buildings shall be secured by the lien of said Development and/or Construction mortgage and shall be considered a part of the Development and/or Construction loan as though initially included therein.

12. Borrower agrees upon demand to do any act or execute any additional documents (including, but not limited to, security agreements on any personalty included or to be included in the Mortgaged Property) as may be required by Lender to secure the Note or confirm the lien of the Mortgage or to comply with any of the conditions contained in the firm purchase commitment of the Long Term Lender, if any.

13. This Agreement shall be binding upon the parties hereto, and their respective successors, heirs, personal representatives and assigns. Wherever the singular number is used herein, the same shall include the plural; the use of any gender shall include all genders. Wherever in this Agreement Mortgagor and Contractor are one and the same party, then the separate covenants, warranties and representations of the Mortgagor and Contractor shall be devolved upon the single party. Wherever in this Agreement Disbursing Agent and Title Insuring Agent are one and the same party, then the separate covenants, warranties and representations of the Disbursing Agent and the Title Insuring Agent shall be devolved upon the single party.

14. It is specifically agreed that time is the essence of this Agreement, and that no waiver of any obligation or requirement hereunder shall at any time thereafter be held to be a waiver of the terms hereunder.

15. All parties executing this Agreement in a representative capacity acknowledge, warrant and represent that they are an official representative of the firm or corporation in whose name they executed this Agreement and that they possess full and complete authority to bind said firm or corporation to the full and faithful performance of all conditions, terms, provisions, covenants and warranties as contained in this Agreement.

16. All sums paid or expended in accordance with any of the provisions of this Agreement (except the proceeds of any fire or other casualty insurance referred to in this Agreement), the Note or the Mortgage shall be deemed advances to Borrower under this Agreement and shall be evidenced by the Note and secured by the Mortgage and may be deducted at the option of Lender from any advances thereafter becoming due under this Agreement.

17. Borrower shall pay all fees and charges incurred in the procuring and making of the Loan including without limitation fees and expenses relating to the examination of title to the Premises, title insurance premiums, surveys, mortgage recording, documentary, transfer, or other similar taxes, revenue stamps, architects' and engineers' services, and attorneys' fees.

18. Borrower will not assign this Agreement or the moneys due hereunder nor convey, assign, mortgage, pledge or encumber any part of the Mortgaged Property without the prior written consent of Lender, but in such event Lender may nevertheless at the option of Lender continue to make advances under this Agreement to Borrower or to those who succeed to the interest or interests of Borrower in the Mortgaged Property and all sums so advanced by Lender shall be deemed advances under and not to be in modification of this Agreement and shall be evidenced and secured by the Note and the Mortgage. The Mortgagor shall not change Title Insurance Company or Agent, Disbursing Agent, Contractor, or Supervising Engineer, without Lender's written consent.

19. Lender may assign in whole or in part, or issue participating interests, in and to this Agreement and the Note and Mortgage to any other person, firm or corporation provided that all of the provisions of this Agreement shall continue to apply to the Loan, the Note and the Mortgage. In the event of such assignment, it shall be deemed a compliance by Lender with this Agreement and to have been made in pursuance of this Agreement and not to be in modification hereof and the advances made by any such assignee shall be evidenced and secured by the Note and the Mortgage. Mortgagor acknowledges that any payments made by it in partial or complete discharge of the loan to any Agent other than the owner and holder of the Mortgage and Note of record, as recorded among the Public Records of the jurisdiction in which the Mortgaged Property is situated, shall constitute a payment to the Mortgagor's Agent and not to the owner and holder of said Note or its agent. In this regard it is understood that until said payment is actually in the possession of the Lender or its assigns, as the case may be, who at that time is the owner and holder of record of said Mortgage and Note, said payment shall be deemed not to have been properly made, and Lender shall not be required to release or discharge the Mortgage, the Mortgage Note, or any of the Mortgaged Property in satisfaction of the obligation pursuant to the provisions of said Mortgage and Note.

20. Mortgagor will pay the fees and commissions of real estate or mortgage brokers, if any, in this transaction and will indemnify Lender from claims of brokers arising by reason of the execution of this Agreement or the consummation of the transaction contemplated hereby.

21. All notices, approvals, waivers, consents, demands, requests and declarations (hereafter called "notices") given or required to be given by either party hereto to the other party shall be in writing. All notices by Lender to Borrower shall be deemed to have been properly given if sent by telegraph or by U.S. registered or certified mail, postage prepaid, addressed to Borrower at the address first herein stated, or to such other address as Borrower may from time to time designate by written notice to Lender given as herein required. All notices by Borrower to Lender shall be deemed to have been properly given if sent by telegraph or by U.S. registered or certified mail, postage prepaid, addressed to Lender at the address first herein stated, or to such other address as Lender may from time to time designate by written notice to Borrower given by Lender or its assigns, as herein required. Notices given in the manner aforesaid shall be deemed sufficiently served or given for all purposes under this Agreement at the time such notice shall be telegraphed or deposited in any post office or branch post office regularly maintained by the United States Government.

22. Lender may at any time and from time to time waive any one or more of the conditions contained in this Agreement, but any such waiver shall be deemed to be made in pursuance of this Agreement and not in modification thereof, and any such waiver in any instance or under any particular circumstances shall not be considered a waiver of such condition in any other instance or any other circumstance.

23. Each party hereto acknowledges his full understanding of the provisions of this Agreement, and that there are no verbal promises, covenants, understandings or agreements made in connection with this Development and/or Construction Loan Agreement, and that said Agreement may be modified only by due and properly executed covenant in writing, signed by the parties hereto and duly witnessed.

24. In the event any one or more of the provisions contained in this Agreement shall, for any reason, not apply to the actual type of loan involved in connection with said Agreement, or wherever any of the provisions or determinations of this Agreement might call for a matter of opinion, Lender (or its assigns) shall be the sole and exclusive judge and determinant of said questions, and Lender's decision with respect to any of said questions shall be conclusive and binding upon all parties to said Agreement.