

## BUILDING LOAN AGREEMENT

(FOR FILING IN THE \_\_\_\_\_ COUNTY CLERK'S OFFICE)

**AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ between \_\_\_\_\_, a New York \_\_\_\_\_ which maintains its office at \_\_\_\_\_, New York \_\_\_\_\_, hereinafter referred to as the borrower, and \_\_\_\_\_ a New York banking corporation which has its principal office at \_\_\_\_\_ hereinafter referred to as the lender,

WHEREAS, the borrower has applied to the lender for a loan ("Loan") of \_\_\_\_\_ **AND 00/100 DOLLARS (\$ \_\_\_\_\_)** evidenced by the Mortgage Note of the borrower in a form approved by the lender conditioned for the repayment of the amounts advanced with interest and terms as therein provided; and a mortgage on premises ("Premises") described in Schedule "A" attached hereto and made a part hereof.

WHEREAS, as further consideration to lender for making the Loan, borrower desires to undertake various covenants to assure the completion of the Improvement (as hereafter defined) in accordance with the plans and specifications on file with and approved by lender in a manner which will preserve to lender the security of the mortgage during the course of construction, and the repayment to the lender of the Loan upon completion of the construction of the Improvements.

NOW THEREFORE, the lender accepts said application and agrees to make said Loan, and the borrower agrees to take it, upon the following terms and conditions:

FIRST. Said Loan shall be secured by one or more mortgages which shall be acceptable to the lender and shall be duly executed and acknowledged by all persons necessary to make them a valid first lien on the Premises described herein and a like lien upon all fixtures and articles of personalty attached to or which may hereafter be attached to or used in connection with Premises.

SECOND. Said Loan shall not be made unless the title to the Premises is satisfactory to the lender.

THIRD. The borrower agrees to furnish an approved subdivision map and site plan of the Premises herein described made by a surveyor acceptable to the lender and duly filed in the \_\_\_\_\_ County Clerk's Office before the first advance is made and the borrower also agrees to furnish, or the lender may procure, surveys made by a surveyor satisfactory to the lender whenever the same may be required by the lender.

FOURTH. On the date set for making the first advance under this Agreement the borrower agrees to pay the charges for the examination of the title, conveyancing and recording fees, appraisal, inspection and building loan service fees, architects', engineers' and surveyors' fees this day agreed upon, and also the recording tax and revenue stamps. In the event that the title to the Premises is not satisfactory to the lender, or in the event of a breach of this agreement by the borrower, then the charges for examination of the title, conveyancing, appraisal, inspection and building loan service fees and architects', engineers' and surveyors' fees shall be a lien on Premises.

FIFTH. The borrower agrees to erect on Premises \_\_\_\_\_ and related

site improvements in accordance with plans and specifications ("Plans") approved by and on file with lender ("Improvement"). The Plans are satisfactory to the borrower, have been approved by the general contractor, to the extent required by applicable law or any effective restrictive covenant, by all applicable governmental authorities and the beneficiary of any such covenant, respectively, and the Plans so approved have been initialed by the borrower and the general contractor, or, if there is no general contractor, by each of the subcontractors insofar as they relate to work to be done by each such subcontractor; all construction, if any, heretofore performed on the Improvement has been performed within the perimeter of the Premises and in accordance with the Plans as approved by the Supervising Engineer and in accordance with any restrictive covenants applicable thereto and such construction has been fully paid for; and there are no structural defects in the Improvements, no violation of any requirements of any governmental authority exists with respect thereto and the anticipated use thereof complies with applicable zoning ordinances, regulations and restrictive covenants affecting the Premises and all requirements for use have been satisfied. All utility services necessary for the construction of the Improvement and the operation thereof for its intended purposes are available at the boundaries of the Premises, including water supply, storm and sanitary sewer facilities, gas and/or electric and telephone facilities.

SIXTH. The borrower agrees to furnish fire insurance in such form and amounts and in such companies as may be approved by the lender on the buildings to be covered by said mortgages from the date of the first advance until said loan is fully paid, and agrees to pay the premium therefor prior to the making of the said first advance.

SEVENTH. The borrower agrees to pay all future installments of assessments, whether the same are liens or not, before the loan is made.

EIGHTH. Said loan is to be advanced at such times and in such amounts as the lender may approve, but tentatively in installments in accordance with Exhibit "B" attached, provided, in the judgment of its appraiser and the Supervising Engineer, the borrower is entitled to an advance, but the lender may require three days' notice in writing from the borrower before an advance shall be called for.

NINTH. The lender may at any time release portions of the Premises upon receiving what, in the opinion of the lender, is a proper payment on account of the mortgage debt.

TENTH. In any of the following contingencies the Mortgage Note and mortgage shall be due on demand at the option of the lender and no further advances need be made by the lender, unless the lender shall otherwise elect:

(a) If the mortgages offered by the borrower shall not give to the lender a first lien for the indebtedness to be secured thereby on the Premises;

(b) If the lender shall not approve of the payment called for because of some act, encumbrance or question arising after the making of the preceding payment or because of some structural defect or omission not previously discovered;

(c) If the borrower assigns this contract or said advances or any interest therein or if Premises be conveyed or encumbered in any way without the consent of the lender;

(d) If any advance be not taken by the borrower within thirty (30) days after it has been requisitioned by borrower and authorized by the lender;

(e) If any of the Improvements violate the requirements of any Federal, State or municipal governments or of any department, agencies or bureaus thereof having jurisdiction over the Premises or the Improvement to be constructed thereon;

(f) If the Improvement be not erected with reasonable speed and in a good and workmanlike manner, and in accordance with Plans satisfactory to and approved by the governmental authority or department having jurisdiction thereof;

(g) If the Improvement on said Premises be materially injured or destroyed by fire or otherwise;

(h) If any materials, fixtures or articles used in the construction of the Improvement or appurtenances thereto be not purchased by the borrower so that the ownership thereof will vest in said borrower free from encumbrance on delivery at the Premises;

(i) If the owners of the Premises do not permit a representative of the lender to enter upon Premises and inspect the buildings thereon at all reasonable times during construction;

(j) If there shall occur, an event of default, as set forth in the Mortgage Note or under the mortgage or mortgages to be recorded pursuant to this Agreement, which such defaults shall continue beyond the respective grace periods, if any, provided in such documents;

(k) Any deviations in the work of construction from the approved Plans without the prior written approval of lender, or the appearance of defective workmanship or materials, which said deviations or defects are not corrected within ten (10) days after written notice thereof;

(l) The appearance on the survey required hereunder of encroachments which have occurred without the approval of lender and which are not removed or corrected within ten (10) days after receipt of lender's notification to borrower of the existence thereof;

(m) Cessation of the construction work prior to completion of the Improvement for a continuous period of ten (10) days or more for causes other than those beyond the control of borrower and consented to in writing by lender;

(n) If borrower neglects, fails, or refuses to keep in full force and effect any permit or approval with respect to the Premises or construction of the Improvement;

**ELEVENTH.** So much of the Loan as may be required for that purpose may be applied at any time, if the lender so requires, to the payment, satisfaction, discharge or release of any existing mortgages, liens or encumbrances on the Premises or to the payment of any fees, brokerage or other expenses incident to the obtaining or making of the Loan.

TWELFTH. The lender may employ a watchman to protect the Improvement from depredation or injury, and the expense of so doing shall be deemed an advance upon, and secured by, the Mortgage Note and mortgage.

THIRTEENTH. If the construction of said Improvement be at any time discontinued or not carried on with reasonable dispatch in the judgment of the lender, said lender, whether foreclosing the mortgage or not, may purchase materials and employ workmen to protect said buildings so that the same will not suffer from depredation or the weather or to complete said buildings, pursuant to paragraph TWENTY-NINTH hereof, so that they may be used for the purposes for which they are designed under the Plans and the sums thus expended shall be deemed advances upon, and secured by the Mortgage Note and mortgage.

FOURTEENTH. If, before the lender has given the certificates of completion of the Loan, there should be default by the borrower in the performance of this agreement or in the payment of the amount secured by the Mortgage Note, mortgage and loan documents given under this agreement, or in the performance of any of the covenants therein contained and action is commenced to foreclose any such mortgage, then at the option of the holder thereof, all or any such mortgages may be foreclosed in either one or more actions, and any judgment of foreclosure obtained in any such action may direct that the Premises covered by all the mortgages sought to be foreclosed in that action be sold in one parcel.

FIFTEENTH. The borrower represents that it is the owner of the Premises herein described and warrants title thereto; and

Borrower also represents that it has all necessary certificates, licenses, authorizations, registrations, permits and/or approvals necessary for the operation of the Premises, the Improvement or any part thereof or the commencement or continuance of construction thereon, as the case may be, including but not limited to, where appropriate and obtainable, a permanent Certificate of Occupancy and Board of Fire Underwriters Certificate for those portions of the Improvement which have been completed as of the date hereof and all required environmental permits, all of which as of the date of the signing hereof are in full force and effect and not, to the knowledge of the borrower, subject to any revocation, amendment, moratorium, release, suspension, forfeiture or the like, the present and/or contemplated use and/or occupancy of the Premises does not conflict with or violate any such certificate, license, authorization, registration, permit and/or approval; and it has delivered to lender, prior to the execution of this Agreement, duplicate originals or officially certified copies of all such certificates, licenses, authorizations, registrations, permits and/or approvals.

SIXTEENTH. (a) Borrower shall cause the construction of the Improvement to be prosecuted with diligence and continuity and in accordance with the Plans on file with and approved by lender and shall cause the construction to commence within thirty (30) days from the date hereof. The Improvement shall be completed on or before \_\_\_\_\_; provided, however, that the time within which the Improvement must be completed may be extended for a period equal to the period of delays beyond the control of Borrower, but in no event, however, may the time for completion of the Improvement extend beyond \_\_\_\_\_. Borrower shall strictly enforce all contracts for the construction of the Improvement and not agree to any alterations or amendments thereof to the end that all contractors promptly and diligently perform all of the

obligations on their part to be performed thereunder, such performance to be in a manner preserving to lender its security upon the Premises and Improvement thereon.

(b) There shall be no change in the Plans without the prior written approval of lender of each such change. With respect to those areas of work designated by lender, no working drawings shall be approved or changed without the prior written approval of lender. Changes shall be submitted for approval on a form acceptable to lender which shall be accompanied by a copy of the revised plans and/or working drawings applicable to the changes. Such changes must, prior to being effective, be duly approved by the lender, the Supervising Engineer and all other persons required by lender.

(c) As a condition to any such approval, lender may require, in its sole discretion, confirmation satisfactory to lender that performance of the work shown on such working drawings or changed plans and specifications or working drawings shall not increase the total cost of the Improvement; and if it appears that performance of such work shall increase the total cost of the Improvement, lender may, in its sole discretion, condition its approval upon deposit by borrower with lender of the total amount of the increase.

(d) Borrower acknowledges that the process of obtaining the information and confirmations needed to put lender in a position to approve such working drawings or changes in plans and specifications or working drawings may cause delays, and borrower consents to such delays and agrees to cooperate diligently with lender in the gathering of the information required. All contracts let by borrower shall, to the extent reasonably possible, contain provisions implementing the provisions of this paragraph.

SEVENTEENTH. The borrower covenants that it will receive the advances to be secured by said mortgages and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of improvement, and that it will apply the same first to the payment of the cost of improvement before using any part of the total of the same for any other purpose.

EIGHTEENTH. The making of any advance or additional advance shall not be deemed an approval or acceptance by lender of the work there before done. The receipt for any advance shall be binding on the borrower although signed by only one of the individual parties constituting the borrower, any one partner, if the borrower is a partnership, and any one officer, if the borrower is a corporation.

NINETEENTH. The Mortgage Note and the mortgage are subject to the conditions, stipulations, agreements and covenants contained herein to the same extent and effect as if fully set forth therein until this Agreement is terminated by (i) the completion of the Improvement, or (ii) the payment to lender of all principal, interest and other sums due and owing on the Mortgage Note and the mortgage.

TWENTIETH. The borrower shall, on demand of lender, do any act or execute any additional documents required by lender to secure the Note or confirm the lien of the mortgage or to comply with any commitment held by the borrower or any party with whom the borrower has contracted to sell the Premises (or any portion thereof) after completion of the Improvement providing for the making of a long-term loan secured by a mortgage, a certificate as to the amount of indebtedness evidenced by the Mortgage Note. If borrower has obtained a

commitment from another lender to provide the permanent financing of the Improvement, borrower represents and warrants that the plans and specifications submitted to and approved by said takeout lender are identical to the Plans as approved by lender; said commitment is in full force and effect and has not been modified (except for modifications approved in writing by lender); borrower has done all things necessary as of the date hereof to keep unimpaired his rights thereunder; and borrower agrees to comply fully with all requirements and conditions provided in said commitment.

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

TWENTY-SECOND. "Supervising Engineer" shall mean the engineer retained by lender from time to time to inspect and report to lender concerning the progress and status of the construction of the Improvement.

TWENTY-THIRD. "Borrower's Construction Cost Equity Requirement" when used in this Agreement shall mean the aggregate of Construction Costs (plus Site Improvement Costs and/or Other Project Costs, if any), as set forth in Exhibit "B" less the total amount of the Loan to be made to borrower by lender pursuant to this Agreement.

TWENTY-FOURTH. "Mortgage Note" when contained herein shall mean the mortgage note or notes bearing even date herewith, totaling the amount to be advanced under this Building Loan Agreement.

TWENTY-FIFTH. A true statement under oath, verified by the borrower as required by Section 22 of the Lien Law, is attached hereto and made a part of this Agreement.

TWENTY-SIXTH. This Agreement may not be changed or terminated orally. Wherever the word "Lender" is used herein, it shall be deemed to include also the personal representatives, successors and assigns of the Lender.

TWENTY-SEVENTH. Borrower shall furnish to lender promptly upon request of lender from time to time correct up-to-date lists of all contractors and subcontractors employed in connection with the construction of the Improvement. Each said list shall show the name, address, and telephone number of each contractor or subcontractor, a general statement of the nature of the work to be done, the labor and materials to be supplied, the names of materialmen if known, and the approximate dollar value of such labor or work with respect to each. Borrower agrees that lender has the right to disapprove any contractor, subcontractor and/or materialman who, in lender's good faith determination is deemed to be financially or otherwise unqualified. Failure by lender to disapprove a contractor, subcontractor, and/or materialman shall not constitute a warranty or representation, that such contractor, subcontractor or materialman not so disapproved, is in fact qualified. Lender shall have the right to telephone or otherwise communicate with each contractor, subcontractor and materialman to verify the facts disclosed by said list or by any Request for Payment, or for any other purpose. All contracts let by borrower or its contractors relating to construction of the Improvement shall require disclosure to lender of information sufficient to make said verification.

TWENTY-EIGHTH. Borrower agrees to cooperate with lender in bringing about the expeditious completion of the work of construction. For the purposes hereof, borrower's cooperation shall include, but without limiting the generality of the foregoing, prompt execution of contract change orders required or reasonably necessary (a) to resolve ambiguities in the Plans, specifications, working drawings or shop drawings, (b) conform the work to prior changes or (c) resolve difficulties or inefficiencies which would arise as a result of strict adherence to the Plans and specifications. Borrower agrees that disputes with contractors, subcontractors, materialmen, architects, engineers, supervisory personnel or any other persons working on or supplying material to the work of construction shall, wherever possible, be resolved (or handled pending final resolution) in a manner which will allow work to proceed expeditiously.

TWENTY-NINTH. Upon the happening of an event of default, lender shall have the right, in addition to all other rights and remedies available to lender hereunder or under the Mortgage Note or mortgage, to enter into possession of the Premises and perform any and all work and labor necessary to complete the Improvement substantially according to the Plans. All sums so expended by the lender shall be deemed to have been paid to the borrower and secured by the mortgage. Effective upon such a default, borrower hereby assigns to lender all of borrower's interest in contracts relating to the construction of the Improvement, but this assignment shall not, in the absence of affirmative ratification of such contracts by lender, be deemed to impose upon lender any of borrower's obligations under any such contract. The borrower hereby constitutes and appoints the lender its true and lawful attorney-in-fact, with full power of substitution in the Premises, to complete the Improvement in the name of the borrower. The borrower hereby empowers said attorney as follows: (a) to use any funds of the borrower, including any funds which may remain undisbursed hereunder, for the purpose of completing the Improvement in the manner called for by the Plans; (b) to make such additions, changes, and corrections in the Plans as shall be necessary or desirable to complete the Improvement in substantially the manner contemplated by the Plans; (c) to employ such contractors, subcontractors, agents, architects, and inspectors as shall be required for said purposes; (d) to pay, settle, or compromise all existing bills and claims which may be liens against the Premises or Improvement, or as may be necessary or desirable for the completion of the Improvement or for clearance of title; (e) to execute all applications and certificates in the name of the borrower which may be required by any of the contract documents; (f) to prosecute and defend all actions or proceedings in connection with the Premises or the construction of the Improvement and to take such action and require such performance as it deems necessary under any guaranty of completion; and (g) to do any and every act which the borrower might do in its own behalf. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. The borrower hereby assigns and quitclaims to the lender all sums undisbursed under the loan, such assignment and quitclaim to be effective only in case of the borrower's default.

Where disputes have arisen which, in the good faith opinion of lender, may endanger timely completion of the Improvement or fulfillment of any condition precedent or covenant herein, lender may agree to advance funds for the account of borrower without prejudice to borrower's rights, if any, to recover said funds from the party to whom paid. Such agreement or agreements may take the form which lender, in its discretion, deems proper, including, but without limiting the generality of the foregoing, agreements to indemnify a title insurer against possible assertion of lien claims, agreements to pay disputed amounts to contractors in the event borrower is unable or unwilling to pay the same, and the like. All sums paid or agreed to be paid pursuant to such

undertaking shall be for the account of borrower, and borrower agrees to reimburse lender for any such payments made upon demand therefor with interest at the Default Rate set forth in the Mortgage Note from the date of payment until date of reimbursement. Such advances shall be secured by the mortgage.

THIRTIETH. All remedies of lender provided for herein are cumulative and shall be in addition to any and all other rights and remedies provided by law. The exercise of any right or remedy by lender hereunder shall not in any way constitute a cure or waiver of default hereunder or under the mortgage, or invalidate any act done pursuant to any notice of default, or prejudice lender in the exercise of any of its rights hereunder or under the mortgage, unless, in the exercise of said rights, lender realizes all amounts owed to it under the Mortgage Note, the mortgage, and hereunder.

THIRTY-FIRST. Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment by a third party, the assertion of which would constitute an event of default hereunder. Any such contests shall be prosecuted diligently and in a manner not prejudicial to lender or the rights of lender hereunder. Upon demand by lender, borrower shall make suitable provision by payment to lender or by bond satisfactory to lender for the possibility that the contest will be unsuccessful. Such provision shall be made within five (5) days after demand therefor and, if made by payment of funds to lender, the amount so deposited shall be disbursed in accordance with the resolution of the contest either to borrower or the adverse claimant.

THIRTY-SECOND. This Agreement is made and entered into for the sole protection and benefit of lender and borrower, their successors and assigns, and no other person or persons shall have any right to action hereon or rights to the loan funds at any time.

THIRTY-THIRD. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The partially executed signature page of any counterpart of this Agreement may be attached to any other partially executed counterpart of this Agreement without impairing the legal effect of the signature(s) on such signature page.

THIRTY-FOURTH. Borrower shall allow placement of a sign by lender at the Premises advertising that lender is providing this financing.

THIRTY-FIFTH. The borrower will, so long as it is owner of any part of the Premises, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges, under the laws of the State of New York and will comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court and applicable to the borrower or to the Premises or any part thereof.

THIRTY-SIXTH. In addition to the insurance policies required by the mortgage, the borrower will keep in full force and effect the following policies of insurance, which policies shall be in amounts and in form and substance satisfactory to the lender:

- (i) Worker's compensation;
- (ii) architect's errors and omissions;

- (iii) general liability insurance for all contractors and subcontractors engaged in connection with construction of the Improvement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year first above written.

IN PRESENCE OF:

By: \_\_\_\_\_

By: \_\_\_\_\_

STATE OF NEW YORK, )

: ss:

COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )

: ss.:

COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

## SCHEDULE A

### EXHIBIT "B"

#### SCHEDULE OF PAYMENTS

(A) Advances of the Loan for costs incurred in connection with the construction of the Improvement (hereinafter called "Construction Costs"), cost of construction of site improvements (hereinafter called "Site Improvement Costs") and project soft costs (hereinafter called "Other Project Costs") all as set forth under Exhibit "B-1" shall be made pursuant to this Agreement, but no more frequently than once every thirty (30) days. In no event shall Construction Costs or Site Improvement Costs be deemed to include the cost of materials stored on or off the Premises. Each advance of the Building Loan shall be made upon written request of the borrower to the lender (any such request for payment being hereinafter called a Request for Payment). Each Request for Payment (i) shall be accompanied by a currently dated AIA form G702/703 or equivalent approved by the lender and signed by a duly authorized representative of borrower, (ii) shall be accompanied by such waivers of lien and other documents as may be required by the lender and/or the Title Company, and (iii) shall be (at lender's option) subject to a retainage equal to the greater of the sums actually retained by borrower from its trades or 10%.

(B) Each advance of the building loan (other than the initial advance at closing) shall be made, in whole or in part, (i) by crediting the amount thereof to the account of the borrower to be maintained with the lender; (ii) at the discretion of the lender, by paying the general contractor and/or any subcontractor or labor or materialmen performing work on the Improvement; or (iii) in such other manner as shall be mutually agreed upon by the borrower and the lender. Advances for Construction Costs, Site Improvement Costs and Other Project Costs shall in no event exceed the amount of \$\_\_\_\_\_ and shall, subject to all of the terms and conditions hereof, be advanced as follows:

1. Up to \$\_\_\_\_\_ for Construction Costs which shall be in accordance with the trade breakdown and funding schedule attached as Exhibit "B-1," for work in place and approved by lender and the Supervising Engineer.
2. Up to \$\_\_\_\_\_ for Site Improvement Costs which shall be in accordance with the trade breakdown attached as Exhibit "B-1" and approved by lender and the Supervising Engineer.
3. Up to \$\_\_\_\_\_ for Other Project Costs approved by lender against receipted bills therefor. The proceeds of the Loan representing Other Project Costs shall be advanced as construction progresses but not more frequently than once a month for any of such costs which shall hereafter be approved by lender and which such costs are actually incurred by the borrower in connection with the construction of the Improvement; **provided** that all such costs for which an advance is to be made shall have been paid in full, and such payment by the borrower prior to submission of the Request for Payment shall be evidenced by canceled checks and paid bills or invoices which shall be reviewed by, and must be satisfactory in all respects to the lender and, **provided, further**, all such costs shall only include those costs which

are a "cost of improvement" as such term is defined and used in the New York Lien Law.

(C) The obligation of the lender to make any advance under this Agreement is subject to the following additional conditions precedent:

1. Each Request for Payment shall, if required by lender, be accompanied by certificate of the Supervising Engineer based upon an on-site inspection, which certificate shall (i) certify that the Improvement completed as of the date of such inspection had been completed in accordance with the plans and specifications, and (ii) state its estimate of (a) the percentage of the construction of the Improvement completed, (b) Construction Costs (and if set forth under paragraph A, Site Improvement Costs) actually incurred to date, (c) the actual sum necessary to complete construction of the Improvement, and (d) the amount of time required to complete construction of the Improvement.
2. Prior to each advance, the title company insuring this loan shall have issued a continuation of title indicating no change or objection to title since the closing date.
3. Prior to each advance, upon a request of the lender, borrower shall furnish evidence satisfactory to the lender of payment of all bills and charges to date, including payment of the general contractor.
4. If required by the lender, borrower shall deliver written lien waivers from each subcontractor that it has received payment in full of all monies owed to it by the general contractor to date.
5. Construction of the Improvement shall comply with all applicable laws, rules, restrictions, orders and regulations of the governmental authorities, and the borrower shall have delivered to the lender all necessary certificates, authorizations, permits and letters required by the governmental authorities to permit the construction and completion of the Improvement.
6. The Supervising Engineer shall be of the opinion that the Improvement can be completed by the maturity date of the Loan or such other deadline as is set forth herein.
7. Delivery by borrower of up to date guaranteed surveys prepared by a licensed surveyor satisfactory to lender showing the location of all boundaries of Premises, with dimensions and areas, thereof, and accurately locating all structures, complete or under construction, street lines, easements, and encroachments.
8. The lender shall have received in form and substance satisfactory to it and its counsel, all documents required by the lender's commitment letter for this loan and those reasonably required by lender's counsel.
9. No part of the Improvement has been taken in condemnation.

10. Borrower or any guarantor of this Loan has neither failed nor refused to deliver to lender any documents, instruments, certificates, opinions, assurances, consents or approvals as lender or its counsel may request.

(D) The lender shall not be required to make any advance of the loan if the portion of such advance to be applied towards Construction Costs (or if set forth under paragraph A Site Improvement Costs), plus the aggregate of (i) the total of all advances of the loan previously made hereunder for Construction Costs (or Site Improvement Costs), (ii) the borrower's Construction Cost Equity Requirement for the items for which funding is sought, and (iii) the retainage if any, is greater than the aggregate of Construction Costs (or Site Improvement Costs), as estimated by the Supervising Engineer, actually incurred for work in place as part of the Improvement. In addition, the lender shall not be required to make any advance of the loan, if in its opinion or the opinion of the Supervising Engineer the balance of the portion of the Loan allocated toward the payment of the Construction Costs (or Site Improvement Costs) after the making of such advance is less (the amount by which it is less being hereinafter called the Deficiency) than the actual sum, as estimated by lender and/or the Supervising Engineer, which will be required to complete construction of the Improvement in accordance with the Plans.

(E) If the lender does not make an advance hereunder because any condition set forth herein to the making of such advance shall not have been satisfied for a period of thirty days after an advance is requested by the borrower, then the failure to satisfy such condition shall be deemed a default under this Agreement. In addition, it shall be a default under this Agreement if the borrower shall not deposit with the lender an amount equal to the Deficiency within ten days after the lender shall notify the borrower of the amount of such Deficiency. Any amounts deposited by the borrower with the lender to pay the Deficiency shall not bear interest and may be commingled with the general funds of the lender and shall be applied by the lender as the lender shall direct, to pay the Construction Costs (or Site Improvement Costs) as construction of the Improvement progresses.

(F) An advance hereunder shall not be deemed to be an approval by the lender of any work or labor performed thereon, or approval or acceptance by the lender as to the fitness of such work or materials.

(G) The lender may make advances of the building loan for Construction Costs, Site Improvement Costs and Other Project Costs, in amounts greater or less than the respective amounts set forth in the trade breakdown schedule or for items which are not listed in such schedule, and any amounts so advanced shall be deemed advanced pursuant to and not in modification hereof. Any provision or condition of this Agreement that requires the lender to make advances on the basis of the trade breakdown schedule is a condition imposed solely and exclusively for the benefit of the lender and no other person or entity shall be entitled to rely on any such condition or provision as imposing an obligation on the lender to make any advances of the building loan in accordance with the aforesaid schedule. All conditions of the obligations of the lender to make advances hereunder are imposed solely and exclusively for the benefit of the lender and its assigns and no other person or entity shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that the lender will refuse to make advances in the absence of strict compliance with any or all thereof and no other person or entity shall, under any circumstances, be deemed to be beneficiary of such conditions, any or all of which may be freely waived in whole or in part by the lender at any time if in its sole

discretion it deems it advisable to do so; notwithstanding the disbursement of monies by the lender pursuant to the terms hereunder or any other actions undertaken by the lender pursuant to the terms of this or any other documents, the lender makes no warranty, either express or implied, as to the conditions, design, operation of, or fitness of the Improvement or that the Improvement is or will be suitable to the borrower or any third person or that the Improvement will be completed free from defects.

(H) Borrower shall reimburse lender for the costs of the inspections made by the Supervising Engineer.

(I) Contractors, subcontractors, laborers, materialmen and suppliers ("Potential Lienors") are cautioned that if Loan advances are made hereunder, the Loan proceeds remaining to be advanced at the time of completion of the Improvement or any time prior thereto may be inadequate to pay all lienable claims incurred by the borrower and unpaid at that time. Potential Lienors are therefore cautioned to exercise sound business judgment in the extension of credit to the borrower and should not expect the lender to make Loan advances so that it will not be necessary for them to exercise such judgment for themselves. Moreover, Potential Lienors are reminded that Subdivision 13(3) of the New York Lien Law provides that "Nothing in this subdivision shall be considered as imposing upon the lender any obligations to see the proper application of such advances by the owner," and the lender has no intention of voluntarily imposing such obligation on itself.

(J) Notwithstanding anything to the contrary contained herein, lender shall not be obligated to make any advances hereunder for construction of the Improvement until such time that all conditions and requirements set forth in the commitment letter of lender dated \_\_\_\_\_ are complied with to the satisfaction of lender. Any advances made by lender prior to the satisfaction of said conditions and requirements shall not act as a waiver of said conditions or requirements or require lender to make any further advance until said conditions and requirements are satisfied.

(K) In no event will the total to be advanced hereunder exceed 70% of the project's appraised value (on a completed and stabilized basis) as determined from time to time by lender's MAI appraiser.

(L) No advance shall be made hereunder unless at the time of such advance there exists a firm contract of sale, without contingency or if contingency exists after its satisfaction, with a bona fide third party purchaser at prices and at terms reasonably satisfactory to lender and which is supported by a cash down payment of at least 10% of the purchase price. In no event however will advances for construction of a home exceed 70% of the average project-wide contract sales price (excluding extras) for similar units or, if less, 90% of the cost of such home.

EXHIBIT "B-1"

SCHEDULE OF CONSTRUCTION COSTS

I. Site Improvements

TOTAL \$

II. Construction Costs

TOTAL \$

CONSTRUCTION COST FUNDING SCHEDULE

|           |                                                                                   |     |
|-----------|-----------------------------------------------------------------------------------|-----|
| Stage 1 - | Excavation, Foundation Walls, Backfill, Underground Plumbing, Slab                | 30% |
| Stage 2 - | Rough Framing, Sheathing, Roof, Exterior Doors, Windows (Enclosed to weather)     | 30% |
| Stage 3 - | Rough Electric, Rough Plumbing, Insulation, Sheetrock, Spackling                  | 30% |
| Stage 4 - | Trim, Paint, Cabinets, Finish Plumbing, Finish Electric, Certificate of Occupancy | 10% |

STATE OF NEW YORK )

: ss.:

COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being duly sworn, deposes and says:

I reside in \_\_\_\_\_, New York; I am \_\_\_\_\_ of \_\_\_\_\_ the borrower mentioned in the within Building Loan Agreement. The consideration paid to lender for the building loan herein is \$\_\_\_\_\_ and that all other expenses incurred, or to be incurred, in connection with said loan are as follows:

- (1) Broker's Commission \$\_\_\_\_\_
- (2) Examination and Insurance of Title and Recording Fees \$\_\_\_\_\_
- (3) Mortgage Tax \$\_\_\_\_\_
- (4) Architect's, Engineer's, Manager's and Surveyor's Fees and Permits \$\_\_\_\_\_

- (5) Sums to Take by Assignment Prior Existing Mortgages which are consolidated with Building Loan Mortgages and also the Interest Charges on such Mortgages \$ -0-
- (6) Sums paid to Discharge or Reduce the Indebtedness under Mortgages and Accrued Interest thereon and other Prior Existing Encumbrances \$ -0-
- (7) Taxes, Assessments, Water Rents and Sewer Rents paid (existing prior to commencement of improvement) \$ -0-
- (8) Attorney's fees of The Roslyn Savings Bank Counsel for preparation of documents, etc. \$ \_\_\_\_\_
- (9) Miscellaneous a) Bank charges, legal... etc. \$ \_\_\_\_\_
- b) Interest reserve \$ \_\_\_\_\_

and in addition to the above items, the sum of \$\_\_\_\_\_ has been deducted from advances to reimburse said borrower for expenditures for land acquisition and the sum of \$-0- has been deducted from advances to reimburse borrower for "costs of construction" prior to the date hereof and that the net sum available to the said borrower for the improvement is \$\_\_\_\_\_ less such amounts as may become due or payable for insurance premiums, interest on building loan mortgages, taxes, assessments, water rents and sewer rents accruing during the making of the improvement.

This statement is made pursuant to Section 22 of the Lien Law of the State of New York.

The facts herein stated are true to the knowledge of the deponent.

Sworn to before me this

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public