BUILDING LOAN AGREEMENT

dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

among

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

as Borrower,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as Lender

LOCATION OF PREMISES:

Block \_\_\_\_\_\_\_\_\_\_\_\_, Lots \_\_\_\_\_\_\_\_\_\_\_

New York, New York

BUILDING LOAN AGREEMENT ("this Agreement") dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by and among \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_ limited liability company ("Borrower"), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (in its individual capacity and not as Administrative Agent, "\_\_\_\_\_\_\_"), and each other lender who may become a Lender pursuant to Section 3.05, Section 7.20 or Section 8.13, each, a "Lender" and collectively, "Lenders") and \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (together with its successors in such capacity, "Administrative Agent").

Borrower desires that Lenders extend credit as provided herein, and Lenders are prepared to extend such credit on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, Borrower, Administrative Agent and Lenders hereby agree as follows:

# PARTICULAR TERMS, DEFINITIONS AND RULES OF CONSTRUCTION

## Particular Terms. As used in this Agreement, the following terms shall have the respective meanings indicated opposite each of them; where the meaning of any term is stated to be "None", provisions involving the application of that term shall be disregarded.

"Aggregate Change Order Amount" -- \_\_\_\_\_\_\_\_\_\_\_\_\_

"Borrower's Architects" -- \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

"Borrower's Interest in the Premises" - Fee.

"Change Order Amount" -- $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

"Commitment Fee" -- \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

"Completion Date" -- \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as such date may be extended by Force Majeure, not to exceed six (6) months in the aggregate.

"Construction Consultant" -- \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, or other firm designated by Administrative Agent.

"Construction Manager" -- \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

"Guarantor" (of Payment and Completion Costs) -- Jointly and severally, \_\_\_\_\_\_\_\_\_\_\_, an individual, and \_\_\_\_\_\_\_\_\_, an individual and any other Person(s) who may hereafter become a guarantor of any or all of Borrower's obligations in respect of the Loan.

"Improvements" -- \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ building comprised of \_\_\_\_ units containing approximately \_\_\_\_\_\_\_\_\_\_\_ square feet of space

"Loan Amount" -- $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

"Maturity Date" -- \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

"Offsite Stored Material Amount" -- $\_\_\_\_\_\_\_\_\_\_\_\_

"Permanent Commitment Date" -- NONE.

"Permanent Lender" -- NONE.

"Stored Material Amount" -- $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

"Subcontract Amount" -- $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Definitions. The following terms, as used herein, shall have the following meanings:

"Additional Costs" -- Any costs, losses or expenses actually incurred by any Lender which it reasonably determines are attributable to its making or maintaining its Pro Rata Share of the Loan, or its obligation to make any Loan advances, or any reduction in any amount receivable by any Lender under the Loan or its Note.

"Administrative Agent's Office" -- Administrative Agent's Office as set forth on the signature page of this Agreement, or such other address in the United States as Administrative Agent may designate by notice to Borrower and Lenders.

"Affected Lender" -- Has the meaning specified in Section 3.05.

"Applicable Lending Office" -- For each Lender and for its portions of the outstanding principal balance under the Note bearing interest at the Prime Based Rate or the LIBO Based Rate, as applicable, the lending office of such Lender (or of an affiliate of such Lender) designated as such on the signature page hereof or in the applicable Assignment and Assumption Agreement, or such other office of such Lender (or of an affiliate of such Lender) as such Lender may from time to time specify to Administrative Agent and Borrower as the office by which its portions of the outstanding principal balance under the Note bearing interest at the Prime Based Rate or the LIBO Based Rate, as applicable, are to be made and maintained.

"Applicable Margin" -- With respect to the Prime Based Rate, \_\_% per annum; and with respect to the LIBO Based Rate, \_\_\_\_\_\_\_\_\_\_\_\_.

"Approved Contract" -- An executed contract for the sale of a Unit to a bona fide purchaser which shall, unless otherwise permitted by Lender, (i) be on a form substantially the same as the form of contract contained in the offering plan for the Premises or a form reasonably approved by Lender, (ii) provide for a sales price no less than that set forth on EXHIBIT H for such Unit and, for contracts executed after the date hereof, a cash deposit on contract signing equal to at least \_\_% of the sales price and (iii) contain no commercially unreasonable conditions to the purchaser's obligations thereunder.

"Arrangement Fee" -- $\_\_\_\_\_\_\_\_\_

“Arranger” -- \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

"Assignee" -- Has the meaning specified in Section 8.13.

"Assignment and Assumption Agreement" -- An Assignment and Assumption Agreement, substantially in the form of EXHIBIT B, pursuant to which a Lender assigns and an Assignee assumes rights and obligations in accordance with Section 8.13.

"Authorization Letter" -- A letter from Borrower to Administrative Agent in the form of EXHIBIT F setting forth, among other things, the name of each individual authorized to execute Requisitions hereunder on Borrower's behalf.

"Building Loan Trust Account" -- A separate non-interest bearing bank account with Administrative Agent which shall not be drawn upon except to pay Direct and Indirect Costs approved by Administrative Agent.

"Business Day" -- Any day on which commercial banks are not authorized or required to close in New York City; and, whenever such day relates to a LIBOR Amount, an Interest Period with respect to a LIBOR Amount, or notice with respect to a LIBOR Amount, any such day in which dealings in Dollar deposits are also carried out in the London interbank market and banks are open for business in London.

"Change Orders" -- Any amendments or modifications to the Plans, Construction Management Agreement or Major Subcontracts.

"Code" -- The Internal Revenue Code of 1986.

"Commercial Unit" -- The individual interest (including any appurtenant interest in the common elements) in the Premises and Improvements created by the submission thereof to the provisions of the Condominium Act to be utilized for retail purposes containing approximately \_\_\_\_ net rentable square feet of space.

"Condominium Act" -- Article 9-B of the Real Property Law of the State of New York (§ 339-d et seq.), and all regulations with respect thereto, now or hereafter promulgated.

"Condominium Documents" -- All documents, as required by the Condominium Act and otherwise, relating to the submission of the Premises and Improvements to the provisions of said Act or to the regulation, operation, administration or sale thereof after such submission, including, but not limited to, a declaration of condominium, offering plan, articles of incorporation, if applicable, by-laws and rules and regulations of a condominium association, management agreement and the contracts of sale and deed forms to be used in connection with the sale of Units.

"Default" -- Any event or circumstance which, with the giving of notice or the passage of time, or both, would become an Event of Default.

"Default Rate" -- Has the meaning given to such term in the Mortgage.

"Delinquency Amount"; "Delinquency Notice"; "Delinquent Lender" -- Have the respective meanings specified in Section 7.16.

"Direct Costs" -- The aggregate costs of all labor, materials, equipment and fixtures necessary for completion of construction of the Improvements.

"Direct Costs Loan"; "Indirect Costs Loan" -- That portion of the Loan Amount applicable and equal to the sum of the Loan Budget Amounts for Direct Costs and Indirect Costs, respectively, shown on the Project Cost Statement.

"Direct Cost Statement" -- A statement, in form approved by Administrative Agent, of Direct Costs incurred and to be incurred, trade by trade, to be prepared by the Construction Manager (or Borrower's supervisor of construction if there is no Construction Manager).

"Dollars" and "$" -- Lawful money of the United States.

"Electing Lender"; "Election Notice"; "Election Period" -- Have the respective meanings specified in Section 7.16.

"Employee Benefit Plan" -- Any employee benefit or other plan established or maintained, or to which contributions have been made, by Borrower or Guarantor.

"ERISA" -- The Employee Retirement Income Security Act of 1974, including the rules and regulations promulgated thereunder.

"ERISA Affiliate" -- Any corporation which is a member of the same controlled group of corporations (within the meaning of Section 414(b) of the Code) as Borrower and/or Guarantor, or any trade or business which is under common control (within the meaning of Section 414(c) of the Code) with Borrower and/or Guarantor, or any organization which is required to be treated as a single employer with Borrower and/or Guarantor under Section 414(m) or 414(o) of the Code.

"Event of Default" -- Has the meaning given to such term in the Mortgage.

"Federal Funds Rate" -- For any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions as published by the Federal Reserve Bank of New York for such day, provided that (i) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the immediately preceding Business Day as so published on the next succeeding Business Day and (ii) if no such rate is so published for any day, the Federal Funds Rate for such day shall be the average of the rates quoted by three (3) Federal Funds brokers to Administrative Agent on such day on such transactions.

"Financial Statements" -- Statements of the assets, liabilities (direct or contingent), income, expenses and cash flow of Borrower and Guarantor, prepared in accordance with sound accounting principles consistently applied and for the Guarantor in substantially the same form (and notwithstanding the foregoing in substantially the same scope) as previously submitted to Administrative Agent subject to Administrative Agent's right to reasonably request additional information from Guarantor.

"Force Majeure" -- Any delay caused by any condition beyond the reasonable control of Borrower, such as an act of God, fire or other casualty, any unanticipated governmental restriction, regulation, control or other delay caused by Governmental Authorities unrelated to any act or failure to act by Borrower, any strike, lockout or other shortage or general unavailability of labor, utilities, or materials, a military invasion by an enemy of the United States, a civil riot, act of terrorism, materially adverse weather conditions, and contractor bankruptcy or any other similar event reasonably determined by Lender not to be within the reasonable control of Borrower (not including the insolvency or financial condition of Borrower or any member or partner of Borrower or any other affiliate of Borrower).

"Governmental Authorities" -- The United States, the State of New York and any political subdivision, agency, department, commission, board, bureau or instrumentality of either of them, including any local authorities, which exercises jurisdiction over Borrower, Guarantor, the Premises or the Improvements.

"Guaranty" -- The guaranty(ies) of the performance of all or part of Borrower's obligations, as indicated in Section 1.01, to be executed by Guarantor.

"Hazardous Materials" -- Has the meaning given to such term in the Mortgage.

"Indemnity" -- An agreement from Borrower and Guarantor or, if there is no Guarantor, such other Persons as shall be satisfactory to Lenders, whereby, among other things, Administrative Agent and Lenders are indemnified regarding Hazardous Materials.

"Indirect Costs" -- Certain costs (other than Direct Costs) of completion of the Improvements, including, but not limited to, architects', engineers' and Administrative Agent's and/or Lenders' attorneys' fees, ground rents, interest and recording taxes and title charges in respect of building loan mortgages, real estate taxes, water and sewer rents, survey costs, loan commitment fees, insurance and bond premiums and such other non-construction costs as are part of the "cost of improvement", as such quoted term is defined in the Lien Law.

"Indirect Cost Statement" -- A statement, in form approved by Administrative Agent, of Indirect Costs incurred and to be incurred, to be prepared by Borrower.

"Individual Loan Commitment" -- With respect to each Lender, the amount set forth below opposite the name of such Lender (subject to change in accordance with the terms of this Agreement):

Lender Individual Loan Commitment

\_\_\_\_\_\_

 \_\_\_\_\_\_

"Initial Advance" -- The first advance of Loan proceeds to be made hereunder.

"Interest Period" -- The period during which interest at the LIBO Based Rate, determined as provided in this Agreement, shall be applicable to the LIBO Rate Request Amount in question, provided, however, that each such period shall be either one (1), two (2), three (3) or six (6) months, which shall be measured from the date specified by Borrower in each LIBO Rate Request for the commencement of the computation of interest at the LIBO Based Rate, to the numerically corresponding day in the calendar month in which such period terminates (or, if there be no numerical correspondent in such month, or if the date selected by Borrower for such commencement is the last Business Day of a calendar month, then the last Business Day of the calendar month in which such period terminates, or if the numerically corresponding day is not a Business Day then the next succeeding Business Day, unless such next succeeding Business Day enters a new calendar month, in which case such period shall end on the next preceding Business Day) and in no event shall any such period extend beyond the Maturity Date.

"Law" -- Any federal, state or local law, statute, rule, regulation, ordinance, order, decree, directive, requirement, code, notice of violation or rule of common law, now or hereafter in effect, and in each case as amended, and any judicial or administrative interpretation thereof by a Governmental Authority or otherwise, including any judicial or administrative order, determination, consent decree or judgment.

"Lender Reply Period" -- Has the meaning specified in Section 8.12.

"Lenders' Counsel" -- \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

"LIBO Based Rate" -- With respect to any LIBOR Amount, the rate per annum (expressed as a percentage) determined by Administrative Agent to be equal to the sum of (i) the quotient of the LIBO Rate for the LIBOR Amount and Interest Period in question divided by [1 minus the Reserve Requirement] (at Administrative Agent's option, rounded up, if necessary, to the nearest 1/100 of 1%) and (ii) the Applicable Margin.

"LIBO Rate" -- The rate per annum (at Administrative Agent's option, rounded up, if necessary, to the nearest 1/100 of 1%) that appears on Dow Jones Page 3750 at approximately 11:00 a.m. (London time) on the date (the "LIBOR Determination Date") two (2) Business Days prior to the first day of the applicable Interest Period, for amounts comparable to the LIBO Rate Request Amount for the same period of time as the Interest Period selected by Borrower in the LIBO Rate Request; or, if such rate does not appear on Dow Jones Page 3750 as of approximately 11:00 a.m. (London time) on the LIBOR Determination Date, the rate (at Administrative Agent's option, rounded up, if necessary, to the nearest 1/100 of 1%) for deposits in Dollars for a period comparable to the applicable Interest Period that appears on the Reuters Screen LIBO Page as of approximately 11:00 a.m. (London time) on the LIBOR Determination Date. If such rate does not appear on either Dow Jones Page 3750 or on the Reuters Screen LIBO Page as of approximately 11:00 a.m. (London time) on the LIBOR Determination Date, the LIBO Rate for the Interest Period will be determined on the basis of the offered rates for deposits in Dollars for an amount comparable to the LIBO Rate Request Amount for the same period of time as such Interest Period that are offered by four (4) major banks in the London interbank market at approximately 11:00 a.m. (London time) on the LIBOR Determination Date. Administrative Agent will request that the principal London office of each of the four (4) major banks provide a quotation of its Dollar deposit offered rate. If at least two (2) such quotations are provided, the LIBO Rate will be the arithmetic mean of the quotations. If fewer than two (2) quotations are provided as requested, the LIBO Rate will be determined on the basis of the rates quoted for loans in Dollars to leading European banks for amounts comparable to such LIBO Rate Request Amount for the same period of time as such Interest Period offered by major banks in New York City at approximately 11:00 a.m. (New York time) on the LIBOR Determination Date. In the event that Administrative Agent is unable to obtain any such quotation as provided above, it will be deemed that the LIBO Rate cannot be determined. For purposes of the foregoing definition, "Dow Jones Page 3750" means the display designated as "Page 3750" on the Dow Jones Markets Service (or such other page as may replace Page 3750 on that service or such other service as may be nominated by the British Bankers' Association as the information vendor for the purpose of displaying British Bankers' Association Interest Settlement Rates for Dollar deposits); and "Reuters Screen LIBO Page" means the display designated as page "LIBO" on the Reuters Monitor Money Rates Service (or such other page as may replace the LIBO page on that service for the purpose of displaying interbank rates from London in Dollars).

"LIBO Rate Request" -- Borrower's telephonic notice (to be promptly confirmed in writing), to be received by Administrative Agent by 12 Noon (New York time) three (3) Business Days prior to the date specified in the LIBO Rate Request for the commencement of the Interest Period (which specified date must be a Business Day), of (a) its intention to have (i) all or any portion of the Principal Amount or the outstanding principal amount under the Other Notes which is not then the subject of an Interest Period (other than an Interest Period which is terminating on the Business Day specified in the notice), and/or (ii) all or any portion of any advance of proceeds of the Loan or the Other Loan, evidenced by, respectively, the Notes or the Other Notes, which is to be made on the Business Day specified in the notice, bear interest at the LIBO Based Rate and (b) the Interest Period desired by Borrower in respect of the amount specified.

"LIBO Rate Request Amount" -- The amount, to be specified by Borrower in each LIBO Rate Request, which Borrower desires bear interest at the LIBO Based Rate and which shall in no event be less than $1,000,000 and which, at Administrative Agent's option, shall be an integral multiple of $100,000.

"LIBOR Amount" -- Each portion of the Principal Amount or the outstanding principal amount under the Other Notes bearing interest at the LIBO Based Rate pursuant to a particular LIBO Rate Request.

"Lien Law"; "Lien Law Statement" -- The Lien Law of the State of New York; the verified statement of Borrower, annexed hereto as EXHIBIT A, required by the Lien Law.

"Loan" -- The Direct Costs Loan and Indirect Costs Loan, collectively, and in an amount initially equal to the Loan Amount.

"Loan Budget Amounts" -- The portion of the Loan Amount, as set forth in the Project Cost Statement, to be advanced for each category of Direct and Indirect Costs.

"Loan Documents" -- This Agreement, the Note, the Mortgage, the Guaranty, the Indemnity, the Authorization Letter, Uniform Commercial Code financing statements in respect of the Mortgaged Property and any other collateral given as security for the Loan, and any other documents which evidence or secure the Loan.

"Major Lease" -- Any lease for commercial space in excess of \_\_\_\_\_\_\_\_ rentable area of the Improvements.

"Major Subcontractor"; "Major Subcontract" -- Any subcontractor or supplier engaged by the Construction Manager and any contractor or supplier engaged by Borrower, under one or more contracts or work orders aggregating the Subcontract Amount or more; any such contract or work order.

“Mezzanine Loan” -- \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

"Mortgage" -- The mortgage, assignment of leases and rents and security agreement(s) made to or for the benefit of Administrative Agent, as agent for Lenders, to secure the payment and performance of Borrower's obligations hereunder, under the Note and otherwise in respect of the Loan.

"Mortgaged Property" -- The Premises and other property constituting the "Mortgaged Property", as said quoted term is defined in the Mortgage.

"Multiemployer Plan" -- Any plan defined as such in Section 3(37) of ERISA.

"Non-Delinquent Lender" -- Each Lender other than the Delinquent Lender(s).

"Note" – Has the meaning specified in Section 2.10.

"Other Notes"; "Other Loans”, “Other Mortgages” – means \_\_\_\_\_\_\_\_\_\_\_\_\_

"Participant"; "Participation" -- Have the respective meanings specified in Section 8.13.

"Pension Plan" -- Any employee pension benefit plan within the meaning of Section 3(2) of ERISA with respect to which Borrower, Guarantor or any ERISA Affiliate at any relevant time has liability or an obligation to contribute.

"Person" -- An individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture or other entity of whatever nature.

"Plans" -- All final drawings, plans and specifications prepared by Borrower, Borrower's Architects, the Construction Manager or Major Subcontractors, and approved by Administrative Agent and the Construction Consultant, which describe and show the labor, materials, equipment, fixtures and furnishings necessary for the construction of the Improvements, including all amendments and modifications thereof made by approved Change Orders (and also showing minimum grade of finishes and furnishings for all areas of the Improvements, except the interior retail space, to be leased or sold in ready-for-occupancy condition).

"Premises" -- The real property described on Schedule A to the Mortgage and located as indicated on the cover hereof, upon all or part of which the Improvements are to be constructed.

"Premises Documents" -- Has the meaning given to such term in the Mortgage.

"Prime Based Rate" -- The Applicable Margin plus the greater of (i) the Federal Funds Rate plus 1/2 of 1% per annum or (ii) the variable per annum rate of interest designated from time to time by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as its "prime rate" (it being understood that the "prime rate" is a reference rate and does not necessarily represent the lowest or best rate being charged to any customer), each change in said rates to be effective as of the date of such change.

"Principal Amount" -- At any time, the aggregate outstanding principal amount of the Note.

"Pro Rata Share" -- With respect to each Lender, the ratio of such Lender's Individual Loan Commitment to the Loan Amount. As of the date hereof, the Lenders' respective Pro Rata Shares are as follows:

Lender Pro Rata Share

\_\_\_\_ \_\_\_\_\_\_%

\_\_\_\_ \_\_\_\_\_\_%

"Project Cost Statement" -- A statement, in form approved by Administrative Agent, setting forth, by category, the costs of completion of the Improvements and the Loan Budget Amounts in respect of the Direct Costs Loan and Indirect Costs Loan.

"Rate Reduction Requirements" -- Substantial completion of the Improvements other than the Commercial Unit substantially in accordance with the Plans, as verified by the Construction Consultant and the issuance of a temporary certificate of occupancy for the Improvements other than the Commercial Unit.

"Regulation D"; "Regulation U" -- Regulations D and U, respectively, of the Board of Governors of the Federal Reserve System.

"Regulatory Change" -- With respect to any Lender and the charging and collecting of interest at the LIBO Based Rate, any change after the date hereof in federal, state or foreign laws or regulations (including Regulation D) or the adoption or making after such date of any interpretations, directives or requests applying to a class of banks including such Lender under any federal, state or foreign laws or regulations (whether or not having the force of law) by any court or governmental or monetary authority charged with the interpretation or administration thereof, excluding any change the effect of which is reflected in a change in the LIBO Based Rate.

"Replacement Lender" -- Has the meaning specified in Section 7.20.

"Required Lenders" -- At any time, those Non-Delinquent Lenders holding a majority of the Principal Amount of the Note held by the Non-Delinquent Lenders.

"Requisition" -- A statement by or on behalf of Borrower, in form approved by Administrative Agent, setting forth the amount of the Loan advance requested in each instance and, if requested by Administrative Agent, including:

the Direct and Indirect Cost Statements;

a "Contractor's Cost Certification" in form approved by Administrative Agent;

"Payment Receipts/Lien Releases" from all contractors, subcontractors or suppliers for costs covered by the previous Requisition in form approved by Administrative Agent; and

proof of payment of all Indirect Costs covered by a previous Requisition.

"Reserve Requirement" -- The rate at which reserves (including any marginal, supplemental or emergency reserves) are actually required to be maintained by any Lender or any Lender's respective Participants, if any, under Regulation D against "Euro-Currency Liabilities", as such quoted term is used in Regulation D. Without limiting the effect of the foregoing, the Reserve Requirement shall reflect any other reserves required to be maintained by any Lender or any Lender's respective Participants, if any, by reason of any Regulatory Change against (i) any category of liabilities which includes deposits by reference to which the LIBO Based Rate is to be determined as provided in this Agreement or (ii) any category of extensions of credit or other assets which includes loans the interest rate on which is determined on the basis of rates used in determining the LIBO Rate.

"Residential Unit" -- Each individual interest (including any appurtenant interest in the common elements) in the Premises and Improvements created by the submission thereof to the provisions of the Condominium Act other than the Commercial Unit.

"Retainage" -- For each contractor (excluding vendors and suppliers), 10% on the first 50% of the Direct Costs of the work and 0% thereafter.

"Stored Materials Statement" -- A statement, in form reasonably approved by Administrative Agent, which, if advances are to be made for stored materials pursuant to Section 2.05, shall be prepared by Borrower as a part of the Direct Cost Statement.

"Substitute Lender" and "Substitution Notice" -- Have the respective meanings specified in Section 3.05.

“Supplemental Fee Letter” --

"Title Insurer" -- The issuer(s), approved by Administrative Agent, of the title insurance policy or policies insuring the Mortgage.

"Unit" -- A Residential Unit or the Commercial Unit, as the context requires.

"United States" and "U.S." -- The United States of America.

## Rules of Construction. Except as expressly provided otherwise, when used in this Agreement (i) "or" is not exclusive, (ii) "hereunder", "herein", "hereof" and the like refer to this Agreement as a whole, (iii) "Article", "Section", "Schedule" and "Exhibit" refer to Articles, Sections, Schedules and Exhibits of this Agreement, (iv) terms defined in the singular shall have a correlative meaning when used in the plural and vice versa, (v) a reference to a Law includes any amendment, modification or supplement to, or replacement of, such Law and (vi) a reference to a document shall mean such document as the same may be amended, modified or supplemented from time to time in accordance with its terms. The cover page and the Exhibits and Schedules, if any, annexed hereto are incorporated as a part of this Agreement with the same effect as if set forth in the body hereof. Any table of contents and all captions and headings herein are for convenience only and shall not affect the interpretation or construction hereof.

# LOAN ADVANCES

## Advances Generally. Subject to the provisions of this Agreement, each Lender will advance its Pro Rata Share of, and Borrower will accept, the Loan Amount in installments as follows:

The Initial Advance will be made upon the satisfaction of the applicable conditions set forth in Section 4.01, and all subsequent advances shall be made monthly thereafter, upon the satisfaction of the applicable conditions set forth in Section 4.02, in amounts which shall be equal to the aggregate of the Direct and Indirect Costs incurred by Borrower through the end of the period covered by the Requisition less:

1. the greater of (x) the Retainage or (y) the actual retainage held back by Borrower or Construction Manager; and
2. the total of the Loan advances theretofore made;

and, at the election of Administrative Agent, less any combination of the following further amounts:

1. after taking into account the reallocations of the budget permitted by Sections 2.06 and 2.07 and without duplication of Administrative Agent's rights under Section 8.01, all or a portion of the amount by which any Direct or Indirect Costs are or are reasonably estimated by Administrative Agent to be greater than the respective Loan Budget Amounts for such costs; and/or
2. any costs covered by the Requisition not approved, certified or verified as provided in Section 2.02, any Indirect Costs covered by a previous Requisition for which any requested proof of payment has not been received by Administrative Agent, and/or any Direct Costs covered by a previous Requisition (other than amounts advanced pursuant to the last sentence of Section 2.06 hereof) for which any requested Payment Receipts/Lien Releases have not been received by Administrative Agent and the Construction Consultant.

Borrower shall use the proceeds of the Loan only for the payment or reimbursement of approved Direct and Indirect Costs in accordance with the Project Cost Statement and this Agreement**.** In no event shall proceeds of the Loan be used, in whole or in part, for the purpose of purchasing or carrying "margin stock", as such quoted term is defined in Regulation U, or in connection with a hostile acquisition or for any illegal purpose.

## Certification and Verification of Costs. Direct Costs are to be certified by the Construction Manager or Borrower's supervisor of construction if there is no Construction Manager. Verification of the monthly progress and Direct Costs which have been incurred by Borrower from time to time, and the estimated total Direct Costs, shall be conclusively determined by the Construction Consultant acting reasonably, except that both Direct and Indirect Costs are also subject to reasonable approval and verification by Administrative Agent from time to time, but such approval shall be given if such costs are incurred and consistent with the Loan Budget Amounts for such Direct and Indirect Costs.

## Procedures for Advances. All advances to Borrower are to be made at Administrative Agent's Office. Borrower shall submit Requisitions to Administrative Agent no later than 10:00 a.m. (New York time) on the date which is six (6) Business Days prior to the date the advance is to be made. Administrative Agent, no later than two (2) Business Days prior to the date a requested advance is to be made, shall (i) notify each Lender either by telephone or by facsimile of the amount requested by Borrower, the amount approved by Administrative Agent, the portion of such advance to be funded by such Lender and the proposed date of such advance and (ii) send to each Lender by facsimile the summary pages of Borrower's Requisition (without attachments except for the Direct and Indirect Cost Statements). Not later than 10:00 a.m. (New York time) on the date of each advance, each Lender shall, through its Applicable Lending Office and subject to the conditions of this Agreement, make the amount to be advanced by it on such day available to Administrative Agent, at Administrative Agent's Office and in immediately available funds. The amount so received by Administrative Agent shall, subject to the conditions of this Agreement, be made available to Borrower, by Administrative Agent's depositing said amount into the Building Loan Trust Account. Subsequent to the making of an advance, Administrative Agent shall deliver to a Lender, within eight (8) Business Days of such Lender's request, such material relating to the Requisition for such advance as such Lender may reasonably request.

## Held-Back Amounts; Advances for Indirect Costs After Completion. Amounts not advanced pursuant to paragraph (a) of Section 2.01 during the course of construction of the Improvements shall be advanced upon the satisfaction of the conditions set forth in Section 4.03, provided, however, once Construction Consultant verifies that a contractor has completed 100% of the work pursuant to its contract, Lender shall release all of the Retainage applicable to such contractor. Loan Budget Amounts for Indirect Costs not advanced prior to completion of construction of the Improvements shall be advanced until exhausted, not more frequently than monthly, for Indirect Costs as incurred after such completion.

## Stored Materials. Lenders shall not make advances of proceeds of the Loan for building materials not yet affixed to or incorporated into the Improvements, except for major building materials reasonably approved by Administrative Agent which are stored on the Premises and intended to be incorporated into the Improvements pursuant to the Plans, and not until Administrative Agent shall have received (a) either (i) bills of sale and other documentation evidencing payment in full of such materials, Borrower's ownership thereof and the release of any right, title or lien in respect thereof by any vendor or (ii) invoices therefor, with the items required by clause (i) hereof to be delivered within ten (10) days after such advance, (b) evidence that such materials are covered by the insurance policies required by this Agreement and are identified and protected against loss, theft and damage in a manner acceptable to the Construction Consultant and (c) evidence that advances made by Lenders for any stored materials do not, at any one time, exceed, in the aggregate, the Stored Material Amount, inclusive of the amount requested.

In addition to the foregoing, Lender shall from time to time make Loan advances, in accordance with the terms of this Agreement, for major building materials approved by it, which are stored at locations off the Premises reasonably acceptable to Lender prior to their incorporation into the Improvements pursuant to the Plans, provided that, in the case of each such advance, Lender shall have received (i) such security agreements, financing statements and other documents as Lender may reasonably require sufficient to create, perfect and protect a first lien on said materials, (ii) evidence that said materials are covered by the insurance policies required by this Agreement, (iii) a written statement from the storer of said materials to the effect that Lender and the Construction Consultant may freely inspect said materials at all reasonable times and (iv) evidence that advances made by Lender for materials stored off site pursuant to this Section 2.05 do not, at any one time, exceed, in the aggregate, the Off Site Stored Material Amount, inclusive of the amount requested. Each request for an advance of Loan proceeds for materials to be stored off-site shall constitute Borrower's representation to Lender that said materials are (1) stored in a designated and secure area, conspicuously marked to show that they are the subject of a security interest held by Lender, and that said materials will not be moved except in connection with their delivery to the Premises, (2) effectively segregated from all other materials of whatever kind located at the off-site location in question and (3) reasonably anticipated to be incorporated into the Improvements within 120 days of the date of the advance therefor. Borrower covenants to deliver to Lender within 10 days of any such advance (x) paid bills and original warehouse receipts or other documents of title which correspond to the materials so purchased and stored off-site, (y) a statement from the seller of said materials to the effect that title thereto has passed to Borrower outright, and that no lien has or will be filed or claimed by the seller in connection therewith and (z) a certificate of Borrower to the effect that said materials are owned by Borrower outright, free and clear of all liens other than the lien held by Lender and that all of the terms of this paragraph have been complied with (the representations set forth above and the statements contained in such certificate shall be deemed to be "representations and warranties" of Borrower with the same force and effect as if they had been set forth in Section 5.01 of this Agreement and the accuracy thereof shall be subject to independent verification by Lender and the Construction Consultant).

## Contingency Advances. There shall be no advances of the Loan Budget Amounts for "Contingency" unless mutually agreed by Borrower and Administrative Agent, Administrative Agent's agreement not to be unreasonably withheld or delayed; provided, however, that, following such time as the Improvements have been satisfactorily completed, lien-free, Borrower shall be entitled to advances of said Loan Budget Amounts to the extent it has actually incurred and paid Costs in respect of completion of the Improvements from its own funds and in excess of amounts advanced hereunder and has provided appropriate evidence of such payment to Administrative Agent. Notwithstanding the foregoing, upon completion of the superstructure for the Improvements, Borrower shall be entitled to request that portions of the Loan Budget Amounts for Direct Costs Contingency be released to Borrower and Administrative Agent shall, to the extent it reasonably determines that the amount of the Direct Cost Contingency so requested is no longer required to be retained, release same to Borrower to be applied by Borrower to cover Direct Costs.

## Reallocation of Amounts on Project Cost Statement. If at any time the undisbursed balance of the Loan Budget Amount for any category of cost shown on the Project Cost Statement is, in Administrative Agent's judgment exercised in good faith, excessive, upon Borrower's request and with the approval of Administrative Agent not to be unreasonably withheld or delayed the excess shall be reallocated to another Loan Budget Amount balance that is insufficient or to any unbudgeted Direct or Indirect Costs subject to the execution of such documentation as Administrative Agent shall reasonably request in order to respect such reallocation and comply with the New York Lien Law.

## Certain Limitations on Advances. Notwithstanding anything to the contrary contained herein, Lenders shall have no obligation to advance any portion of the Loan Budget Amount, if any, for "Interest on Loan" (i) if, when and to the extent that Administrative Agent, in its reasonable judgment, determines that the Improvements are generating, on a cash basis, positive cash flow in excess of Borrower's other usual, reasonable and customary expenses regarding the Premises and/or Improvements or (ii) if and to the extent that Borrower shall have previously paid any interest under the Note from sources other than advances hereunder or agreements supplemental hereto or release proceeds from the sale of Units.

## Nature of Lenders' Obligations; Borrower's Rights and Obligations in Event a Lender Fails to Make an Advance. The obligations of Lenders under this Agreement are several, and no Lender shall be responsible for the failure of any other Lender to fund the portion required to be funded by such other Lender of an advance of the Loan. In cases where a Delinquent Lender fails to fund the portion required to be funded by it of an advance and (x) none of the other Lenders elects to be an Electing Lender pursuant to Section 7.16 and to fund the Delinquent Lender's share of the advance and (y) Borrower is unable to procure a Replacement Lender in accordance with Section 7.20, the obligation of the Non-Delinquent Lenders to fund their respective portions of such advance and each subsequent advance shall be conditioned on (i) Borrower's committing in writing to Lenders, prior to any such advance, that it will fund the entire Delinquency Amount and (ii) Borrower's submitting satisfactory evidence to Administrative Agent, at the time of each advance, that Borrower and/or Guarantor have paid, from their own funds, a portion of the Direct and Indirect Costs that are the subject of such advance in an amount equal to the Delinquent Lender's portion of such advance.

## Note. The Loan shall be evidenced by a single note of Borrower in the form of EXHIBIT E, duly completed and executed by Borrower in a principal amount equal to the Loan Amount, Applicable Lending Offices (said note, as the same may hereafter be amended, modified, extended, severed, assigned, substituted, renewed or restated from time to time, the “Note”). The Note shall mature, and all outstanding principal and other sums thereunder shall be paid in full, on the Maturity Date, as the same may be accelerated or extended.

In case of any loss, theft, destruction or mutilation of the Note, Borrower shall, upon its receipt of an affidavit of an officer of such Lender or Administrative Agent as to such loss, theft, destruction or mutilation and an appropriate indemnification, execute and deliver a replacement Note in the same principal amount and otherwise of like tenor as the lost, stolen, destroyed or mutilated Note, which replacement note shall contain therein a statement that it is a replacement note and evidences the same indebtedness as the lost, stolen or mutilated Note and no additional or further indebtedness.

## Payments and Distributions; Certain Consequences of Delinquent Lender Status. Borrower shall make each payment under this Agreement and under the Note not later than 11:00 a.m. (New York time) on the date when due to Administrative Agent at Administrative Agent's Office in immediately available funds. Administrative Agent will thereafter, on the day of its receipt of each such payment, cause to be distributed to each Lender such Lender's appropriate share (based upon Lender’s respective portions of the Principal Amount and the respective rates of interest applicable thereto) of the payments of principal and interest, and its appropriate share of the payments of other sums, in like funds for the account of such Lender's Applicable Lending Office. Payments by Borrower hereunder or under the Note or other Loan Documents shall be made without setoff or counterclaim.

Except to the extent otherwise provided in this Agreement, whenever any payment to be made under this Agreement or under the Note is due on any day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of the payment of interest and, if applicable, fees, as the case may be.

Notwithstanding the foregoing provisions of this Section, (i) Administrative Agent shall make no payment to a Delinquent Lender until the Non-Delinquent Lenders have been paid in full all outstanding principal, accrued and unpaid interest and any other sums owing to them under the Loan Documents, it being understood that payments of interest on account of the Delinquent Lender’s portion of the Principal Amount shall be held by Administrative Agent in a non-interest bearing account and not distributed to the Delinquent Lender until such time as all principal, interest and other sums due to the Non-Delinquent Lenders have been paid in full; (ii) any payments (other than interest, as provided in clause (i) above) which would otherwise be due a Delinquent Lender shall be distributed to the Non-Delinquent Lenders until such time as all principal, interest and other sums due to the Non-Delinquent Lenders have been paid in full (except that any such amounts otherwise due a Delinquent Lender received by Administrative Agent during an Election Period shall be retained by Administrative Agent until the expiration of the Election Period and either paid to the Delinquent Lender, if the delinquency is cured, or paid to the Non-Delinquent Lenders, if the delinquency is not cured); and (iii) Administrative Agent shall deduct, from amounts due (or, in the case of a Delinquent Lender, amounts that would otherwise be payable to such Delinquent Lender being held by Administrative Agent pursuant to clause (i) above) a Lender in default under its obligations under Section 7.05, the amount owing by such Lender pursuant to said Section 7.05 and pay the amount so deducted to itself, the other Lenders, or such other party as is entitled to such amount, as applicable.

Notwithstanding anything to the contrary contained in this Agreement or the Delinquent Lender's Note, to the extent a Delinquent Lender is obligated under this Agreement to advance Loan proceeds in respect of interest on the Note, and fails to do so, and such amount is not funded by a Replacement Lender or Electing Lender, such portion of the interest on the Delinquent Lender's Note (i.e., the interest on the Delinquent Lender's Note that, absent the Delinquent Lender's Delinquency, would have been paid by advances from the Loan Budget Amount for "Interest on Loan", until the same was fully disbursed) shall accrue and payment thereof shall be deferred until the Maturity Date (whether as stated or by acceleration or otherwise), it being understood that the maximum amount of interest that may be so deferred shall be the undisbursed portion of the Delinquent Lender's portion of the Loan Budget Amount for "Interest on Loan".

If, following such time as all amounts owing under the Loan to the Non-Delinquent Lenders and Administrative Agent have been paid in full, Administrative Agent is holding funds in respect of amounts payable to the Delinquent Lender as provided in the third paragraph of this Section, Administrative Agent shall file an interpleader action in New York State Supreme Court, New York County and shall deposit the funds so held (less a sum equal to Administrative Agent's reasonable fees and expenses in connection with said interpleader action and deposit) with said court and Administrative Agent shall thereupon be relieved of responsibility to any party with respect to the funds deposited. Borrower and each Delinquent Lender hereby jointly and severally agree to reimburse Administrative Agent for all costs and expenses that Administrative Agent may incur in connection with the foregoing interpleader action.

Except as provided above in this Section and in Section 7.16, each Lender's interest in the Loan shall be of equal priority with the interest of each other Lender.

## Interest. Borrower shall have the option, subject to the terms and conditions set forth in this Agreement, of paying interest on the Principal Amount or portions thereof at the Prime Based Rate or the LIBO Based Rate. If Borrower desires the application of the LIBO Based Rate, it shall submit a LIBO Rate Request to Administrative Agent, which LIBO Rate Request shall be irrevocable, subject to Borrower's right to convert the rate of interest payable under the Note with respect to any LIBOR Amount from the LIBO Based Rate to the Prime Based Rate as provided in Section 2.14. Administrative Agent shall, on the day of its receipt of the LIBO Rate Request from Borrower, notify each Lender either by telephone or by facsimile of the specified LIBOR Amount and the amount of the Lender's portion thereof, the Interest Period and date of commencement thereof, and the interest rate applicable to such LIBOR Amount. Each LIBO Rate Request shall be applicable to Lenders’ respective portions of the Note in accordance with the Lenders' respective Pro Rata Shares, so that, barring a conversion or suspension of the LIBO Based Rate by one or more, but not all, Lenders, pursuant to Article III, each Lender’s portion of the Principal Amount shall contain segments bearing interest at the Prime Based Rate and/or LIBO Based Rate(s) under particular Interest Period(s), each of which segments shall correspond to a proportional segment of every other Lender’s portion of the Principal Amount. Notwithstanding the foregoing, if a Lender shall fail to fund the share it is required to fund of any advance of the Loan and an Electing Lender shall commit to fund the Delinquency Amount pursuant to Section 7.16, then from and after the time of the first disbursement of the Delinquency Amount by the Electing Lender, (i) in the case of a LIBO Rate Request with respect to an advance, such LIBO Rate Request shall be applicable to Lender’s respective portions of the Note in accordance with the respective portions of such advance made by the Lenders; (ii) in the case of a LIBO Rate Request with respect to a portion of the Principal Amount bearing interest at the Prime Based Rate to be converted to the LIBO Based Rate, such LIBO Rate Request shall be applicable to Lenders’ respective portions of the Note ratably in accordance with the portions of the Principal Amount bearing interest at the Prime Based Rate attributable to each Lender; and (iii) in the case of a LIBO Rate Request with respect to an existing LIBOR Amount that is to be the subject of a new Interest Period, such LIBO Rate Request shall be applicable to Lenders’ respective portions of the Note ratably in accordance with the respective shares of such existing LIBOR Amount. In the event that Borrower fails to submit a LIBO Rate Request with respect to a LIBOR Amount not later than 12 Noon (New York time) three (3) Business Days prior to the last day of the relevant Interest Period, the LIBOR Amount in question shall bear interest, commencing at the end of such Interest Period, at the Prime Based Rate.

Interest shall be computed on an actual/360-day basis (i.e., interest for each day during which any portion of the Principal Amount is bearing interest at a particular interest rate per annum shall be computed at such rate divided by 360).

Borrower shall pay interest on the Principal Amount to Administrative Agent for the account of Lenders. Interest on the Principal Amount shall be payable, in arrears, monthly on the first day of the first month following the Initial Advance and on the first day of each month thereafter until the Note is repaid in full.

## Limitation on Number of Interest Periods. Borrower shall not have the right to have more than five (5) Interest Periods, in the aggregate, in respect of the Loan and the Other Loan in effect at any one time, whether or not any portion of the Principal Amount is then bearing interest at the Prime Based Rate.

## Conversions of Interest Rate. Provided there exists no Event of Default, Borrower shall have the right to convert, from time to time, the rate of interest payable under the Note with respect to any portion of the Principal Amount to the LIBO Based Rate or the Prime Based Rate, subject to the terms of this Agreement (including, without limitation, the payment of all amounts due in connection with any such conversion from the LIBO Based Rate on a date other than the last day of an applicable Interest Period) and provided that, in the case of a conversion from the LIBO Based Rate, the entire LIBOR Amount is the subject of the conversion. Conversions shall be accomplished (i) in the case of a conversion from the Prime Based Rate to the LIBO Based Rate, by Borrower's submission of a LIBO Rate Request in accordance with Section 2.12 or (ii) in the case of a conversion from the LIBO Based Rate to the Prime Based Rate, by Borrower's request to Administrative Agent by telephone (to be promptly confirmed in writing), to be received by Administrative Agent at least three (3) Business Days prior to the date specified for such conversion, specifying the LIBOR Amount with respect to which the interest rate is to be converted and the date of the conversion. On the date of its receipt of such request, Administrative Agent shall notify each Lender thereof either by telephone or by facsimile.

## Inapplicability of LIBO Based Rate. Any portion of the Principal Amount to which the LIBO Based Rate is not or cannot pursuant to the terms of this Agreement be applicable shall bear interest at the Prime Based Rate. Upon the occurrence and during the continuance of an Event of Default, the entire Principal Amount shall, at the option of the Required Lenders, immediately and without notice to Borrower, bear interest at the Prime Based Rate. In addition, following the occurrence and during the continuance of an Event of Default, Borrower shall have no right to submit a LIBO Rate Request with respect to any LIBOR Amount for which the current Interest Period is expiring. The foregoing provisions shall not be construed as a waiver by Lenders of their right to pursue any other remedies available to them under the Mortgage or any other Loan Document nor shall they be construed to limit in any way the application of the Default Rate as provided in the Mortgage.

## Late Payment Premium. Borrower shall pay to Administrative Agent for the account of Lenders a late payment premium in the amount of 4% of any payments of principal or interest under the Loan made more than ten (10) days after the due date thereof, which late payment premium shall be due with any such late payment.

## Voluntary Prepayments. Borrower may, upon at least five (5) Business Days' notice to Administrative Agent, prepay the Principal Amount, in whole or part, without premium or penalty; provided, however, that (i) any partial prepayment under this Section shall be in a principal amount of not less than $1,000,000 and an integral multiple of $100,000, (ii) prepayment of a LIBOR Amount other than on the last day of the applicable Interest Period shall be subject to the provisions of Section 3.03 and (iii) each prepayment under this Section shall include all interest accrued on the amount of principal prepaid (and all late charges and other sums that may be payable) through the date of prepayment. Amounts prepaid may not be reborrowed. Payments pursuant to Section 9.02 shall not be subject to this Section.

## Acceleration of Advances.

###### Lenders may, in their absolute discretion, accelerate all or any portion of the amounts to be advanced hereunder without regard to Borrower's satisfaction of the conditions to its entitlement to Loan proceeds and no Person dealing with Borrower or the Construction Manager or any other person shall have standing to demand any different performance from Lenders, provided, however, that if Borrower chooses to deposit with each Lender such Lender's Pro Rata Share of the amount of any Loan advances in excess of the amount which Borrower would be entitled to pursuant to Section 2.01, Lenders shall give Borrower a credit against the interest due on the Note equal to the interest which would accrue on the amount so deposited as if it bore interest at the interest rate that would be applicable thereto under the Note.

###### CONTRACTORS, SUBCONTRACTORS, LABORERS, MATERIALMEN and SUPPLIERS are cautioned that if Loan advances are made under the alternative set forth in paragraph (a) above, proceeds of the Loan remaining to be advanced at the time of the completion of the Improvements, or any time prior thereto, may be inadequate to pay all lienable claims incurred by Borrower and unpaid at that time. All potential lienors are therefore cautioned to exercise sound business judgment in the extension of credit to Borrower and should not expect Lenders to make Loan advances in such amounts and at such times that it will not be necessary for said parties to exercise such judgment for themselves. Moreover, they are reminded that subdivision (3) of Section 13 of the Lien Law provides that "Nothing in this subdivision shall be considered as imposing upon the lender any obligation to see to the proper application of such advances by the owner," and Lenders have no intention of voluntarily imposing such obligation on themselves.

# YIELD MAINTENANCE ETC.

## Additional Costs and Other Effects of Regulatory Changes. Borrower shall pay directly to a Lender, promptly upon demand, such amounts as are necessary to compensate such Lender for Additional Costs resulting from any Regulatory Change which (i) subjects such Lender to any tax, duty or other charge with respect to the Loan or the Note, or changes the basis of taxation of any amounts payable to such Lender under the Loan or the Note (other than taxes imposed on the overall net income of such Lender or of its Applicable Lending Office by the jurisdiction in which such Lender's principal office or such Applicable Lending Office is located), (ii) imposes, modifies or deems applicable any reserve, special deposit or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities of, such Lender, (iii) imposes on such Lender or, in the case of LIBOR Amounts, on the London interbank market, any other condition affecting the Loan or the Note, or any of such extensions of credit or liabilities or (iv) imposes any capital adequacy requirements on such Lender by virtue of the Loan or the Note. Such Lender will notify Borrower (with a copy to Administrative Agent) of any event occurring after the date hereof which would entitle it to compensation pursuant to this paragraph as promptly as practicable after it obtains knowledge thereof and determines to request such compensation, and will designate a different Applicable Lending Office for those portions of the Loan affected by such event if such designation will avoid the need for, or reduce the amount of, such compensation and will not, in such Lender's sole opinion, be disadvantageous to it, provided that such Lender shall have no obligation to so designate an Applicable Lending Office located in the United States.

Without limiting the effect of the immediately preceding paragraph, in the event that, by reason of any Regulatory Change, (i) a Lender incurs Additional Costs based on or measured by the excess above a specified level of the amount of (1) a category of deposits or other liabilities of such Lender which includes deposits by reference to which the LIBO Rate is determined as provided in this Agreement and/or (2) a category of extensions of credit or other assets of such Lender which includes loans the interest on which is determined on the basis of rates referred to in the definition of "LIBO Rate" in Section 1.02, (ii) a Lender becomes subject to restrictions on the amount of such a category of liabilities or assets which it may hold or (iii) it shall be unlawful or impossible for a Lender to make or maintain its Pro Rata Share of the Loan (or any  part  thereof) at the LIBO Based Rate, then such Lender's obligation to make or maintain its Pro Rata Share of the Loan (or parts thereof) at the LIBO Based Rate (and Borrower's right to request the same) shall be suspended and such Lender shall give notice thereof to Borrower (with a copy to Administrative Agent) and, upon the giving of such notice, interest payable on the affected Lender’s portion of the Note shall be converted to the Prime Based Rate, unless such Lender may lawfully continue to maintain its Pro Rata Share of the Loan (or any part thereof) then bearing interest at the LIBO Based Rate to the end of the current Interest Period(s), at which time the interest rate on the affected Lender’s portion of the Note shall convert to the Prime Based Rate. If subsequent to any conversion to the Prime Based Rate as provided above such Lender determines that such Regulatory Change has ceased to be in effect, such Lender will so notify Borrower (with a copy to Administrative Agent), and Borrower may convert the rate of interest payable under the affected Lender’s portion of the Note with respect to those portions of the Principal Amount bearing interest at the Prime Based Rate to the LIBO Based Rate by submitting a LIBO Rate Request in respect thereof and otherwise complying with the provisions of this Agreement with respect thereto.

Determinations by each Lender of the existence or effect of any Regulatory Change on its costs of making or maintaining its Pro Rata Share of the Loan, or portions thereof, at the LIBO Based Rate, or on amounts receivable by it in respect thereof, and of the additional amounts required to compensate such Lender in respect of Additional Costs, shall be conclusive, so long as made on a reasonable non-discriminatory basis.

## Limitations on Availability of LIBO Based Rate. Anything herein to the contrary notwithstanding, if, at the time of or prior to the determination of the LIBO Based Rate in respect of any LIBO Rate Request Amount as provided in this Agreement, (i) Administrative Agent determines (which determination shall be conclusive, so long as made on a reasonable non-discriminatory basis) that by reason of circumstances affecting the London interbank market generally, adequate and fair means do not or will not exist for determining the LIBO Based Rate applicable to an Interest Period or (ii) a Lender determines (which determination shall be conclusive, so long as made on a reasonable non-discriminatory basis) that the LIBO Rate will not accurately reflect the cost to such Lender of making or maintaining its Pro Rata Share of the Loan (or any portion thereof) at the LIBO Based Rate, then Administrative Agent, in the case of the circumstances described in clause (i) above, or such Lender, in the case of the circumstances described in clause (ii) above, shall give Borrower prompt notice thereof (with a copy to Administrative Agent in the case of the notice from such Lender), and the LIBO Rate Request Amount in question, in the case of the circumstances described in clause (i) above, or such Lender's portion thereof, in the case of the circumstances described in clause (ii) above, shall bear interest, or continue to bear interest, as the case may be, at the Prime Based Rate. If at any time subsequent to Administrative Agent's or such Lender's giving of such notice, Administrative Agent or such Lender, as the case may be, determines that because of a change in circumstances the LIBO Based Rate is again available to Borrower, Administrative Agent or such Lender, as the case may be, shall so notify Borrower (with a copy to Administrative Agent, in the case of the notice from such Lender) and Borrower may convert the rate of interest payable under the Note or such Lender's portion thereof, as the case may be, from the Prime Based Rate to the LIBO Based Rate by submitting a LIBO Rate Request in respect thereof and otherwise complying with the provisions of this Agreement with respect thereto.

## Certain Compensation. Borrower shall pay directly to a Lender, immediately upon request and notwithstanding contrary provisions contained in the Mortgage or other Loan Documents, such amounts as shall, in the judgment of such Lender (which shall be conclusive so long as made on a reasonable non-discriminatory basis), compensate it for any loss, cost or expense incurred by it as a result of (i) any payment or prepayment (under any circumstances whatsoever, whether voluntary or involuntary) of any portion of the Principal Amount bearing interest at the LIBO Based Rate on a date other than the last day of an applicable Interest Period, (ii) the conversion (for any reason whatsoever, whether voluntary or involuntary) of the rate of interest payable under such Lender's portion of the Note from the LIBO Based Rate to the Prime Based Rate with respect to any portion of the Principal Amount then bearing interest at the LIBO Based Rate on a date other than the last day of an applicable Interest Period, (iii) the failure of all or a portion of an advance of the Loan which was to have borne interest at the LIBO Based Rate pursuant to a LIBO Rate Request to be made, (iv) any failure by Borrower to prepay any portion of the Principal Amount bearing interest at the LIBO Based Rate on the date specified in Borrower's notice of prepayment or (v) the failure of Borrower to borrow, continue or convert in accordance with a LIBO Rate Request submitted by it, which amounts shall include, without limitation, an amount equal to the Present Value (determined as hereinafter provided) of the dollar amount which is obtained by multiplying the number of days from the date of the occurrence to the last day of the applicable Interest Period by a number which is calculated by (i) multiplying the amount prepaid, converted, not advanced, not prepaid or not borrowed, as the case may be, by the excess of the LIBO Based Rate applicable thereto over the current rate for United States Treasury securities (bills on a discounted basis shall be converted to a bond equivalent) with a maturity date closest to the last day of the applicable Interest Period and (ii) dividing the product thereof by 360. For purposes of this Section, Present Value shall be determined by using the number of days during the period from the date of occurrence to and including the last day of the applicable Interest Period and using the above-referenced United States Treasury security rate. A determination by a Lender as to the amounts payable to it pursuant to this Section shall be conclusive absent manifest error.

## "Lender" to Include Participants. For purposes of this Article III and of the definition of "Additional Costs" in Section 1.02, the term "Lender" shall, at each Lender's option, be deemed to include such Lender's present and future Participants in the Loan to the extent of each such Participant's actual Additional Costs or other losses, costs or expenses payable pursuant to this Article III.

## Substitution of Lenders. If any Lender (an "Affected Lender") (i) makes demand upon Borrower for (or if Borrower is otherwise required to pay) Additional Costs pursuant to Section 3.01 or (ii) gives notice to Borrower that such Lender is unable to make or maintain its Pro Rata Share of the Loan at the LIBO Based Rate as a result of a condition described in clause (ii) of Section 3.02 or in the second paragraph of Section 3.01, Borrower may, within ninety (90) days of receipt of such demand or notice, as the case may be, give notice (a "Substitution Notice") to Administrative Agent and to each Lender of its intention to replace such Affected Lender with another financial institution (the "Substitute Lender") designated in such Substitution Notice. If, within thirty (30) days of Administrative Agent's receipt of such Substitution Notice, (x) Administrative Agent shall notify Borrower and each Lender in writing that the Substitute Lender is reasonably satisfactory to the Required Lenders and (y) the Affected Lender shall not agree to waive the payment of the Additional Costs in question or the effect of the circumstances described in clause (ii) of Section 3.02 or in the second paragraph of Section 3.01, then the Affected Lender shall, so long as no Event of Default shall exist, assign its pro rata share of the Loan and all of its rights and obligations under this Agreement to the Substitute Lender, and the Substitute Lender shall assume all of the Affected Lender's rights and obligations, pursuant to an agreement, substantially in the form of an Assignment and Assumption Agreement, executed by the Affected Lender and the Substitute Lender. It shall be a condition to any such assignment and assumption that, concurrently therewith, the Affected Lender also assigns, and the Substitute Lender assumes, a proportionate part of the Affected Lender's rights and obligations under the Other Loan. In connection with such assignment and assumption, the Substitute Lender shall pay to the Affected Lender an amount equal to the outstanding principal amount of the Affected Lender's portion of the Note plus all interest accrued thereon, plus all other amounts, if any (other than the Additional Costs in question), then due and payable to the Affected Lender with respect to the Loan; provided, however, that prior to or simultaneously with any such assignment and assumption, Borrower shall have paid to such Affected Lender all amounts (other than the Additional Costs in question) properly demanded and unreimbursed under this Article III. Upon the effective date of such assignment and assumption and the payment by the Substitute Lender to Administrative Agent of a fee, for Administrative Agent's own account, in the amount of $3,500, the Substitute Lender shall become a party to this Agreement and shall have all the rights and obligations of a Lender as set forth in such Assignment and Assumption Agreement, and the Affected Lender shall be released from its obligations hereunder, and no further consent or action by any party shall be required.  If the Substitute Lender is not incorporated under the Laws of the United States or a state thereof, it shall, prior to the date of the assignment, deliver to Borrower and Administrative Agent certification as to exemption from deduction or withholding of any United States federal income taxes in accordance with Section 7.13.

Borrower, Administrative Agent and Lenders shall execute such modifications to the Loan Documents as shall, in the reasonable judgment of Administrative Agent, be necessary or desirable in connection with the substitution of Lenders in accordance with the foregoing provisions of this Section, provided, however, that no such modifications shall increase in other than a de minimis manner, or otherwise affect Borrower's rights and obligations under the Loan Documents.

# CONDITIONS PRECEDENT

## Conditions Precedent to Initial Advance. Lenders shall not be obligated to make the Initial Advance until the following conditions shall have been satisfied:

### There shall exist no Default or Event of Default, and no Default or Event of Default would result from the making of the Initial Advance;

### The representations and warranties made to Administrative Agent or Lenders herein, in the other Loan Documents and in any other document, certificate or statement executed or delivered to Administrative Agent or Lenders in connection with the Loan shall be true and correct on and as of the date of the Initial Advance with the same effect as if made on such date;

### The Improvements, if any, shall not have been materially injured or damaged by fire or other casualty unless Administrative Agent shall have received, for the account of Lenders, insurance proceeds sufficient in the judgment of the Construction Consultant to effect the satisfactory restoration of the Improvements and to permit completion of the Improvements prior to the Completion Date;

### The Mezzanine Loan shall have closed and been fully disbursed to Borrower, Administrative Agent shall have received and approved certified copies of the documents governing the Mezzanine Loan and Administrative Agent and the Mezzanine Lender shall have entered into an intercreditor agreement with respect thereto;

### Lenders shall have received and approved each of the following:

#### Fees and Expenses. (i)  The Commitment Fee and the Arrangement Fee each to be paid to Administrative Agent for the respective accounts of the parties specified in the Supplemental Fee Letter (each Lender to receive and retain a portion thereof pursuant to a separate agreement between \_\_\_\_\_ and each Lender) whether or not any advances are made hereunder; and those fees required by the Supplemental Fee Letter to be paid on or before the date hereof, to be retained by Administrative Agent for its own account; and (ii) all fees and expenses incurred by Administrative Agent (including, without limitation, the reasonable fees and expenses of Lenders' Counsel, the Construction Consultant, Administrative Agent’s environmental and insurance consultants, and the preparer of the appraisal required by paragraph (4) below);

#### Loan Documents and the Supplemental Fee Letter. This Agreement, the Supplemental Fee Letter and each of the other Loan Documents, duly executed by the parties thereto, and, where applicable, duly acknowledged and in proper form for recording or filing, as the case may be, and all necessary or desirable recordings and filings shall have been duly made;

#### Financial Statements. Current Financial Statements, certified by an appropriate financial officer, and such other financial data as Administrative Agent shall require;

#### Appraisal. An independent M.A.I. appraisal of the Premises and Improvements complying in all respects with the standards for real estate appraisals established pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

#### Insurance Policies. The policies of insurance required by the Mortgage, together with evidence of the payment of the premiums therefor;

#### Hazardous Materials Report/Reliance Letter. A detailed report, in form satisfactory to Administrative Agent, by a properly qualified engineer, which shall include, inter alia, a certification that such engineer has obtained and examined a list of prior owners, tenants and other users of all or any portion of the Premises or the improvements thereon, and has made an on-site physical examination of the Premises, and a visual observation of the surrounding areas, and has found no evidence of past or present Hazardous Materials activities or the presence of Hazardous Materials, together with, if required by Administrative Agent, a "reliance letter" addressed to Administrative Agent with respect to such report;

#### Title Policy. A paid title insurance policy (or policies), in the amount of the Mortgage, in ALTA 10-17-92 (with New York endorsements) or other form approved by Lenders' Counsel, issued by the Title Insurer, shall insure the Mortgage to be a valid lien on Borrower's Interest in the Premises free and clear of all defects and encumbrances except those previously received and approved by Lenders' Counsel, and shall contain:

1. full coverage against mechanics' liens (filed and inchoate),
2. a reference to the survey but no survey exceptions except those theretofore approved by Lenders' Counsel,
3. such affirmative insurance and endorsements as Lenders' Counsel may require, and
4. a Pending Disbursements Clause in the form of EXHIBIT D; and, if any such policy is dated earlier than the date of the Initial Advance, a written continuation of or endorsement to such policy, in a form approved by Lenders' Counsel, conforming to the requirements of said EXHIBIT D and setting forth no additional exceptions except those approved by Lenders' Counsel,

and shall be accompanied by such reinsurance agreements between the Title Insurer and title companies approved by Administrative Agent, in ALTA 1994 facultative form, as Administrative Agent may require;

#### List of Prior Owners. A list, certified by the Title Insurer, of the prior owners during the period from January 1, 1940 to the date of such certification, of all or a portion of the Premises or the improvements thereon;

#### Survey. A current survey of the Premises certified to Administrative Agent, the Title Insurer showing:

1. the location of the perimeter of the Premises by courses and distances,
2. all easements, rights-of-way, and utility lines referred to in the title policy required by this Agreement or which actually service or cross the Premises,
3. the lines of the streets abutting the Premises and the width thereof, and any established building and setback lines,
4. encroachments and the extent thereof upon the Premises,
5. the Improvements to the extent constructed, and the relationship of the Improvements by distances to the perimeter of the Premises, established building, setback and street lines,
6. if the Premises are described as being on a filed map, a legend relating the survey to said map, and
7. all flood zone designations in respect of the Premises;

#### Leases and Premises Documents. Certified copies of all Premises Documents;

#### Counsel Opinion. An opinion of Borrower's counsel to the effects set forth on EXHIBIT G or otherwise satisfactory to Lenders' Counsel;

#### Organizational Documents. If Borrower, the mortgagor under the Mortgage (if different from Borrower), Guarantor or any general partner or member of any of them is a corporation, current copies of the following documents with respect to each (unless otherwise indicated):

1. a good-standing certificate from the jurisdiction of its incorporation and, as to Borrower and the mortgagor under the Mortgage only, from the State of New York,
2. a resolution, certified by the corporate secretary, of the shareholders or directors of the corporation authorizing the consummation of the transactions contemplated hereby and the execution, delivery and performance of the Loan Documents and any other documents to be executed, delivered or performed by said corporation (including any substitute or replacement Note to be executed and delivered pursuant to the terms hereof), and
3. a certificate of the corporate secretary as to the incumbency of the officers executing any of the documents required hereby,

and, if Borrower, the mortgagor under the Mortgage (if different from Borrower), Guarantor or any general partner or member of any of them is a partnership, venture, limited liability company or trust:

1. the entity's organizational agreement and all amendments and attachments thereto, certified by a general partner, venturer, member or trustee to be true and complete,
2. any certificates filed or required to be filed by the entity in the jurisdiction of its formation and in the State of New York in order for it to do business in those jurisdictions, and
3. evidence of the authorization of the consummation of the transactions contemplated hereby and the execution, delivery and performance of the Loan Documents and any other documents to be executed, delivered and performed by said entity (including any substitute or replacement Note to be executed and delivered pursuant to the terms hereof), and including any required consents by partners, venturers, members, trustees or beneficiaries;

#### Requisition. A Requisition for the Initial Advance, together with, if requested by Administrative Agent, proof of payment of any Indirect Costs included therein;

#### Permits and Approvals. Copies of any and all authorizations (including plot plan and subdivision approvals, zoning variances, water, sewer, building and other permits) required at the then current stage of construction by Governmental Authorities or otherwise necessary for the construction, use, occupancy and operation of the Premises and/or Improvements for the purposes contemplated by the Plans in accordance with all applicable Laws;

#### Chattel Searches. UCC searches against Borrower or other owner of the Premises and advice from the Title Insurer to the effect that searches of proper public records disclose no leases of personalty or financing statements filed or recorded against the Premises, Borrower or other owner of any Mortgaged Property;

#### Plans, Etc. A complete set of the Plans and copies of a soil-engineer's report, a site plan (showing all necessary approvals, utility connections and site improvements) and all inspection and test records and reports made by or for Borrower or Borrower's Architects;

#### Consultant's Report. A report from the Construction Consultant to the effects that (i) it has received and approved the items required by paragraph (f) below, (ii) the Plans have been approved by all applicable Governmental Authorities, (iii) the Improvements as shown by the Plans will comply with applicable zoning and other Laws, (iv) a Construction Management Agreement and/or Major Subcontracts are in effect which satisfactorily provide for the construction of the Improvements, (v) all roads and utilities necessary for the full utilization of the Improvements for their intended purposes have been completed, or the presently installed and proposed roads and utilities will be sufficient for the full utilization of the Improvements for their intended purpose and will be available to and servicing the Premises upon completion of the Improvements, (vi) the construction of the Improvements theretofore performed, if any, was performed in accordance with the Plans and (vii) construction of the Improvements, along with all necessary roads and utilities, will be finished on or before the Completion Date; and to such other effects as Administrative Agent may reasonably request;

#### Construction Contracts and Will-Serve Letters. Copies of the Construction Management Agreement, the Major Subcontracts then in effect and Borrower's agreement with Borrower's Architects, in each case certified by Borrower to be true and complete, together with "will-serve" letters from Borrower's Architects and the Construction Manager in forms approved by Administrative Agent, and "will-serve" letters also in form approved by Administrative Agent from all Major Subcontractors specified by Administrative Agent;

#### Bonds. Unless waived by Administrative Agent, performance bonds naming Administrative Agent as co-obligee and labor and materials payment bonds, each in AIA Document No. A‑312 (1984 Edition) form or other form approved by Administrative Agent, for penal sums equal to the amounts of the Major Subcontracts (exclusive of vendors and suppliers) specified by Administrative Agent and for subcontracts for the installation of flooring and ceramic/marble;

#### Progress Schedule. A progress schedule or chart showing the interval of time over which each item of Direct Cost is projected to be incurred or paid;

#### (21) Project Cost Statement. The Project Cost Statement;

#### (22) Additional Documentation. Such other approvals, opinions or documents as Administrative Agent may reasonably request.

### The Construction Consultant shall have received and approved each of the following:

#### Related Documents. Copies of the items required by paragraphs (6), (8), (13), (16), (18), (19), (20) and (21) of Section 4.01(e), together with copies of any Major Leases or Premises Documents which contain any requirements or specifications in respect of construction of the Improvements;

#### Title Documents. Copies of any documents listed as exceptions to title in the title policy required hereby which are relevant to the construction or use of the Improvements; and

#### Requisition. If the Initial Advance consists in whole or in part of advances for Direct Costs, a copy of the Requisition therefor.

## Conditions to Advances After the Initial Advance. Lenders' obligation to make advances of proceeds of the Loan after the Initial Advance shall be subject to the satisfaction of the following conditions:

### There shall exist no Default or Event of Default, and no Default or Event of Default would result from the making of the advance;

### The representations and warranties made to Administrative Agent and/or Lenders herein, in the other Loan Documents and in the Requisition shall be true and correct on and as of the date of the advance with the same effect as if made on such date;

### Administrative Agent shall have received a written continuation report of or endorsement to the title policy insuring the Mortgage to the date of such advance, in the form approved by Lenders' Counsel, conforming to the pending disbursement requirements set forth in EXHIBIT D and setting forth no additional exceptions (including survey exceptions) except those approved by Lenders' Counsel; and

### Administrative Agent and the Construction Consultant shall have received a Requisition for the advance, together with such other documentation and information as either of them may reasonably require consistent with the provisions hereof.

## Conditions to Last Direct Costs Advance. In addition to the requirements of Section 4.02, in the case of the last Direct Costs Loan advance as provided in Section 2.04, Administrative Agent shall also have received and approved:

### A report from the Construction Consultant to the effect that construction of the Improvements (exclusive of the interior retail space) has been substantially completed, and any necessary utilities and roads have been finished and made available for use, substantially in accordance with the Plans and that it has received satisfactory evidence of receipt of a temporary certificate of occupancy for the residential portion of the Improvements; and

### An update of the survey of the Premises, certified to Administrative Agent and the Title Insurer, showing the completed Improvements.

## Take-Out. Notwithstanding the provisions of Section 4.02 and 4.03, if the Loan shall be purchased by another lender designated by Borrower (the "Take-Out Lender") for a purchase price equal to the outstanding amount of the Loan (the "Loan Purchase Price") on a date (the "Loan Purchase Date") on or before the Maturity Date, Lenders agree to disburse the undisbursed Loan Budget Amounts (so that the Loan is fully disbursed) on the Loan Purchase Date (the "Purchase Date Advance"). The Purchase Date Advance shall increase the outstanding Loan evidenced by the Notes and be funded to Borrower or its designee on the Loan Purchase Date simultaneously with the funding of the Loan Purchase Price to Lenders by the Take-Out Lender.

# REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Administrative Agent and Lenders that:

## Due Formation, Power and Authority. If it, the mortgagor under the Mortgage (if different from Borrower), Guarantor or any general partner or member of any of them is a corporation, partnership, venture, limited liability company or trust, each such entity is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation, is qualified to do business (if required) and is in good standing in the State of New York, and has full power and authority to consummate the transactions contemplated hereby and to execute, deliver and perform this Agreement and any other Loan Document to which it is a party.

## Legally Enforceable Agreements. Each Loan Document to which Borrower or Guarantor is a party is a legal, valid and binding obligation of such party, enforceable against Borrower or Guarantor, as the case may be, in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar Laws affecting creditors' rights generally.

## Financial Statements. Financial Statements have been heretofore delivered to Lenders which are true, correct and current in all material respects and which fairly present the respective financial conditions of the subjects thereof as of the respective dates thereof; no material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof and no borrowings (other than the Loan) which might give rise to a lien or claim against the Mortgaged Property or proceeds of the Loan have been made by Borrower or others since the dates thereof.

## Compliance With Laws; Payment of Taxes. Borrower and Guarantor are in material compliance with, and the transactions contemplated hereby and by the other Loan Documents do not and will not violate any provision of, or require any filing, registration, consent or approval under, any Law presently in effect having applicability to Borrower or Guarantor (and with respect to Guarantor, the failure to comply with which is likely to have a material adverse effect on Guarantor's business or financial condition); Borrower has filed, subject to any permissible extensions, all tax returns (federal, state and local) required to be filed and has paid all taxes, assessments and governmental charges and levies due and payable (including those in respect of the Premises), including interest and penalties, except those contested in good faith pursuant to appropriate proceedings.

## Litigation. There are no actions, suits or proceedings pending or, to the best of Borrower's knowledge, threatened against or affecting it, Guarantor, the Premises, the validity or enforceability of the Mortgage or the priority of the lien thereof at law, in equity or before or by any Governmental Authorities except actions, suits or proceedings which have been disclosed to Administrative Agent in writing or in financial statements delivered to Administrative Agent or which are fully covered by insurance, exclusive of deductibles, or would, if adversely determined, not be likely to substantially impair the ability of Borrower or Guarantor to pay when due any amounts which may become payable under the Note, the Other Notes or the Guaranty or to otherwise pay and perform their respective obligations in connection with the Loan and the Other Loans; to Borrower's knowledge, neither it nor Guarantor is in default, in any material respect, with respect to any order, writ, injunction, decree or demand of any court or Governmental Authorities.

## No Conflicts or Defaults. The consummation of the transactions contemplated hereby and the performance hereof and of the other Loan Documents have not resulted and 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, partnership agreement or other instrument to which Borrower or Guarantor is a party or by which either of them may be bound or affected.

## Solvency. Borrower and Guarantor are, and upon consummation of the transactions contemplated by this Agreement, the other Loan Documents and any other related documents, will be, solvent.

## Governmental Regulation. Borrower is not subject to regulation under the Investment Company Act of 1940 or any Law limiting its ability to incur indebtedness for money borrowed as contemplated hereby.

## Insurance. Borrower has in force, and no premiums are past due in respect of, all of the insurance required by the Mortgage.

## ERISA. As of the date of this Agreement, neither Borrower nor Guarantor nor any other Person, including any fiduciary, has engaged in any prohibited transaction (as defined in Section 4975 of the Code or Section 406 of ERISA) which could subject Borrower or Guarantor or any Person whom they have an obligation to indemnify to any tax or penalty imposed under Section 4975 of the Code or Section 502 of ERISA; neither Borrower nor Guarantor nor any ERISA Affiliate maintains, contributes to or has any liability with respect to a Multiemployer Plan or any other plan subject to Title IV of ERISA; each Employee Benefit Plan is administered in accordance with its terms and in material compliance with all applicable Laws, including any reporting requirements; to the best knowledge of Borrower and Guarantor, each Pension Plan intending to qualify under Section 401(a) or 401(k) of the Code does so qualify; there is no lien outstanding or security interest given in connection with a Pension Plan; neither Borrower nor Guarantor nor any ERISA Affiliate has any material liability with respect to an accumulated funding deficiency (whether or not waived) under Section 412 of the Code or Section 302 of ERISA; neither Borrower nor Guarantor has any material liability for retiree medical or death benefits (contingent or otherwise) other than as required by Section 4980B of the Code; and no part of the funds to be used by Borrower or Guarantor in satisfaction of their respective obligations under this Agreement and the other Loan Documents constitute "plan assets" of any "employee benefit plan" within the meaning of ERISA or of any "plan" within the meaning of Section 4975(e)(1) of the Code, as interpreted by the Internal Revenue Service and the United States Department of Labor in rules, regulations, releases or bulletins or as interpreted under applicable case law. Borrower and Guarantor represent and warrant for the period of this Agreement that there will be no changes to the preceding sentence which shall materially adversely affect the Mortgaged Property or business affairs or financial condition of Borrower or Guarantor or the ability of Borrower to perform this Agreement, except for any such change which can be and is timely corrected.

## Other Documents. The Premises Documents are unmodified and in full force and effect, and to Borrower's knowledge, there are no defaults (or events which with notice or the passage of time, or both, would constitute such a default) under any thereof and all conditions to the effectiveness and continuing effectiveness thereof required to be satisfied as of the date hereof have been satisfied.

## No Default. There exists no Default or Event of Default.

## Accuracy of Information; Full Disclosure. Neither this Agreement nor any documents, financial statements, reports, notices, schedules, certificates, statements or other writings furnished by or on behalf of Borrower or Guarantor to Administrative Agent or Lenders in connection with the negotiation of this Agreement or the other Loan Documents or the consummation of the transactions contemplated hereby, or required herein or by the other Loan Documents to be furnished by or on behalf of Borrower or Guarantor, contains any untrue or misleading statement of a material fact or omits a material fact necessary to make the statements herein or therein not misleading; to Borrower's knowledge, there is no fact which Borrower has not disclosed to Administrative Agent in writing which materially affects adversely or, so far as Borrower can now foresee, will materially affect adversely any of the Mortgaged Property or the business affairs or financial condition of Borrower or Guarantor, or the ability of Borrower or Guarantor to perform this Agreement and the other Loan Documents.

## Separate Tax and Zoning Lot. The Premises constitute one or more distinct parcels for purposes of taxes, assessments and impositions (public or private) and are not otherwise considered as part of a larger single lot for purposes of taxes, assessments or impositions (public or private).

## Requisition as Reaffirmation. Each Requisition submitted to Administrative Agent, and the receipt of the funds requested thereby, shall constitute an affirmation that the representations and warranties contained herein and in the other Loan Documents remain true and correct as of the respective dates of such Requisitions.

## Plans and Improvements. The approved Plans are scheduled by sheet number, title, date and revised date in the Consultant's Report required by paragraph (17) of Section 4.01(e), which schedule is hereby certified by Borrower to be true and correct, and are the same as the filed plans referred to in the building permits for the Improvements; the Plans are satisfactory to it, have been reviewed and approved by Guarantor, the Construction Manager, Borrower's Architects and, to the extent required by applicable Law or any restrictive covenant, by all Governmental Authorities and the beneficiary of any such covenant; all construction, if any, already performed on the Improvements has been performed on the Premises substantially in accordance with the Plans approved by the Persons named above and with any restrictive covenants applicable thereto; to the best of Borrower's knowledge, there are no structural defects in the Improvements or violations of any requirement of any Governmental Authorities with respect thereto other than those disclosed in the municipal searches furnished to Lenders' Counsel which will be cured in connection with the completion of the Improvements; to the best of Borrower's knowledge, the Improvements and the planned use thereof comply with all applicable zoning and other Laws and restrictive covenants affecting the Premises (or, with respect to the restrictive covenants, the planned use has been affirmatively insured in the title policy insuring the Mortgage); and all requirements for such use have been satisfied.

## Utility Services. All utility services necessary for the construction of the Improvements and the operation thereof for their intended purposes are available at the boundaries of the Premises, including water supply, storm and sanitary sewer, gas, electric power and telephone facilities.

## Creation of Liens. It has entered into no contract or arrangement of any kind the performance of which by the other party thereto would give rise to a lien on the Mortgaged Property prior to the Mortgage except for its arrangements with Borrower's Architects, the Construction Manager, Major Subcontractors and contractors or subcontractors who have filed lien waivers or signed Payment Receipts/Lien Releases in form approved by Administrative Agent for all payments due under said arrangements as of the end of the period covered by the last Requisition.

## Roads. All roads necessary for the full utilization of the Improvements for their intended purposes have either been completed or the necessary rights of way therefor have been acquired by appropriate Governmental Authorities or dedicated to public use and accepted by said Governmental Authorities, and all necessary steps have been taken by Borrower and said Governmental Authorities to assure the complete construction and installation thereof no later than the Completion Date or any earlier date required by any Law.

## Construction Prior to Closing. It advised the Title Insurer in writing prior to the issuance of the title policy insuring the Mortgage whether any survey, soils-testing, site-development, excavation or other work related to construction of the Improvements was begun or done before the Mortgage was recorded.

## Lien Law Statement. Attached hereto as EXHIBIT A is the Lien Law Statement in conformity with Section 22 of the Lien Law.

# COVENANTS OF BORROWER

Borrower covenants and agrees that it will promptly:

## Compliance with Laws; Payment of Taxes. Subject to the right of contest in accordance with Section 1.07 of the Mortgage, comply with all Laws applicable to it or the Mortgaged Property, or any part thereof, such compliance to include, without limitation, paying before the same become delinquent all taxes, assessments and governmental charges imposed on it or the Mortgaged Property, or any part thereof, and promptly furnish Administrative Agent upon request with reports of any official searches made by Governmental Authorities and any claims of violations thereof.

## Leases and Premises Documents. Deliver to Administrative Agent certified copies of all Major Leases in respect of the Premises and all Premises Documents and all amendments to any thereof (executed after the date hereof) together with (i) if requested by Administrative Agent, and to the extent in Borrower's possession, current financial statements of the tenants thereunder or parties thereto, as the case may be, and of the guarantor(s), if any, of such tenants or parties and (ii) in the case of all Major Leases, a notice-of-assignment letter substantially in the form of EXHIBIT C; and keep all Premises Documents and, except as may be permitted, or not prohibited, by the Mortgage, all leases in full force and effect.

## Continuing Accuracy of Representations and Warranties. Cause all of the representations and warranties made to Administrative Agent or Lenders herein and in the other Loan Documents to be continuously true and correct or indicate in writing any changes therein to the actual knowledge of Borrower upon request.

## Covenants, Restrictions and Easements. Comply with all restrictions, covenants and easements affecting the Premises or the Improvements and cause the satisfaction of all conditions hereof.

## Inspection and Cooperation. Permit Administrative Agent, its representatives and the Construction Consultant to enter upon the Premises, inspect the Improvements and all materials to be used in the construction thereof and examine all detailed plans and shop drawings which are or may be kept at the construction site; cooperate and cause the Construction Manager and Major Subcontractors to cooperate with the Construction Consultant to enable it to perform its functions hereunder; at the time of each inspection by the Construction Consultant, make available to said consultant, on demand, daily log sheets covering the period since the immediately preceding inspection showing the date, weather, subcontractors on the job, number of workers and status of construction.

## Payment of Costs. Pay all costs and expenses required for completion of the Improvements and the satisfaction of the conditions hereof, including, without limitation:

### all document and stamp taxes, recording and filing expenses and fees and commissions lawfully due to brokers (other than brokers with whom Administrative Agent or Lenders or their representatives have dealt who have not dealt with Borrower) in connection with the transactions contemplated hereby,

### any taxes, insurance premiums, liens, security interests or other claims or charges against the Premises or Improvements, and

### all costs of completion of the Improvements substantially in accordance with the Plans.

## Brokers. Indemnify Administrative Agent and Lenders against claims of brokers (other than brokers with whom Administrative Agent or Lenders or their representatives have dealt who have not dealt with Borrower) arising by reason of the execution hereof or the consummation of the transactions contemplated hereby.

## Construction of Improvements. Commence construction of the Improvements no later than thirty (30) days from the date hereof; submit a Requisition for the Initial Advance within thirty (30) days after such commencement and subsequent advances on a monthly basis thereafter; cause construction thus begun to be prosecuted with diligence and continuity in a good and workmanlike manner in accordance with the Plans except during the existence of delays for Force Majeure; use only materials, fixtures, furnishings and equipment in connection with construction of the Improvements that are not used or obsolete; and obtain a temporary certificate of occupancy for the residential portion of the Improvements on or before the Completion Date; time being of the essence as to this Section.

## Project Sign. Following the execution hereof, place a sign, at its own expense, on the Premises at a location satisfactory to Administrative Agent indicating, among other things, that Lenders are providing the financing for construction of the Improvements.

## Building Loan Trust Account. Receive and deposit in the Building Loan Trust Account all advances made hereunder; hold the same and the right to receive the same as a trust fund for the purpose of paying only the "cost of improvement", as such quoted term is defined in the Lien Law, including payments for such purpose itemized on the Direct and Indirect Cost Statements made by Borrower prior to the Initial Advance but subsequent to the commencement of construction of the Improvements.

## Certain Materials to be Submitted. Deliver to Administrative Agent and the Construction Consultant upon request copies of all contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower claims title to any materials, fixtures or articles incorporated in the Improvements or subject to the lien of the Mortgage, or under which it has incurred costs for which it is entitled to an advance of proceeds of the Loan, and deliver to Administrative Agent such other data or documents in connection with the Improvements as Administrative Agent may from time to time reasonably request.

## Correction of Defects and Departures from Plans. Upon demand of Administrative Agent or the Construction Consultant, correct any defects (including structural) in the Improvements or any material departures from the Plans (as determined by Construction Consultant) not approved by Administrative Agent to the extent such approval is required pursuant to this Agreement.

## Change Orders. Not permit the performance of any work pursuant to any Construction Management Agreement, Major Subcontract, Change Order or Plans until Administrative Agent and the Construction Consultant (i) shall have received copies thereof, provided, however, that with respect to a Change Order not requiring Administrative Agent's approval, notification shall be given to Administrative Agent and the Construction Consultant within five (5) Business Days after issuance of the Change Order and (ii) in the case of Plans or Change Orders which will result in (A) a single change in the aggregate of the contract prices for the construction of the Improvements in excess of the Change Order Amount or which, together with the aggregate of Change Orders theretofore executed by Borrower (excluding those approved by Administrative Agent pursuant to this Section) will result in a change in such prices in excess of the Aggregate Change Order Amount or (B) a change in the character of the Improvements, shall have given specific written approval thereof, which approval shall not be unreasonably withheld or delayed by Administrative Agent or Construction Consultant; it being understood that approval of any Plans or Change Order will not obligate Lenders to increase or advance any Loan Budget Amount on account of any such Plans or Change Order.

## Regarding Construction Contracts. Require covenants from the Construction Manager to the same effect as the covenant made by Borrower in the immediately preceding Section; and provide in every Construction Management Agreement that the Construction Manager will deliver to Administrative Agent or the Construction Consultant copies of all Major Subcontracts, Change Orders and any other contract, purchase order or subcontract covering labor, materials, equipment or furnishings to or for the Improvements, and the names of all Persons with whom the Construction Manager has contracted or intends to contract for the construction of the Improvements or for the furnishing of labor or materials therefor.

## Security of Site. Employ suitable means to protect from theft or vandalism all portions of the Improvements and all tools and building materials stored on the Premises.

## Management and Leasing of Premises. Administrative Agent acknowledges that \_\_\_\_\_\_\_ Management Group, Inc. is intended to be the management agent for the Premises as disclosed in the offering plan for the condominium to be created in respect of the Premises and Administrative Agent approves of \_\_\_\_\_\_ Management Group, Inc., as management agent, subject to receipt by Administrative Agent of an agreement acceptable to Administrative Agent in the form of EXHIBIT N hereto.

## Reporting Requirements. Furnish to Administrative Agent (it being understood that Administrative Agent shall provide, promptly upon request, to each Lender):

Annual Financial Statements; Tax Returns. As soon as available and in any event within one hundred twenty (120) days after the end of the respective fiscal years of Borrower and Guarantor, Financial Statements of Borrower and Guarantor, as of the end of and for such fiscal year, certified by the principal financial or accounting officer of Borrower or by Guarantor, as the case may be, in reasonable detail, stating in comparative form the respective figures for the preceding fiscal year; and, if Borrower or Guarantor is an individual, complete copies of its federal and state income tax returns within 60 days of the date filed;

Semi-Annual Financial Statements. As soon as available and in any event within forty-five (45) days after the end of each calendar semi-annual period, Financial Statements of Borrower and Guarantor, as of the end of and for such calendar semi-annual period, certified by the principal financial or accounting officer of Borrower or by Guarantor, as the case may be, in reasonable detail and stating in comparative form the respective figures for the corresponding date and period in the preceding fiscal year;

Certificate of No Default. At the time of the delivery of the Financial Statements required by paragraph (2) above, a certificate of the principal financial or accounting officer of Borrower, dated within five (5) days of the delivery of such statements to Administrative Agent, stating that such officer knows of no Default or Event of Default which has occurred and is continuing, or, if any such Default or Event of Default has occurred and is continuing, specifying the nature and period of existence thereof and what action Borrower has taken or proposes to take with respect thereto;

Notice of Litigation. Promptly after the commencement and knowledge thereof, notice of all actions, suits and proceedings before any court or arbitrator or any Governmental Authorities, affecting Borrower, Guarantor or all or any part of the Mortgaged Property that are not covered by insurance (subject to commercially reasonable deductibles) and, with respect to Guarantor, would have a material adverse effect on Guarantor's financial condition or ability to perform under the Guaranty;

Notices of Defaults. As soon as possible and in any event within ten (10) days after Borrower becomes aware of the occurrence of a Default or Event of Default, a written notice setting forth the details of such Default or Event of Default and the action that has been taken or is proposed to be taken with respect thereto; and

General Information. Promptly, such other information respecting the condition or operations, financial or otherwise, of Borrower, Guarantor or the Premises as Administrative Agent or any Lender may from time to time reasonably request.

## Contract Deposits, Rent Security Deposits and Operating Accounts. Maintain in an account with \_\_\_\_\_ all contract deposits in connection with all Approved Contracts, all rent security deposits in connection with all Major Leases and all operating accounts.

## Condominium Covenants. Regarding the condominium aspect of the contemplated development of the Premises and Improvements:

### submit the Premises, together with all of the Improvements constructed or to be constructed thereon, to the provisions of the Condominium Act and will satisfy all of the requirements thereof and of any other applicable Law or restriction necessary to create a valid residential condominium (with the Commercial Unit) regime in respect of the Premises and Improvements;

### duly perform or cause to be duly performed all obligations of developers or sponsors under the Condominium Documents, and do or cause to be done all things necessary to operate and maintain the Premises and Improvements as a residential condominium project (with the Commercial Unit), that are required to be done by the developer or sponsor, provided, however that Borrower will not record or file the declaration of condominium with the appropriate land records without Administrative Agent's prior written consent which approval shall not be unreasonably withheld, conditioned or delayed; comply with all Laws, including securities Laws, which may apply to the sale of Units and furnish such evidence of compliance therewith as Administrative Agent may reasonably request;

### not enter into a Major Lease for commercial space in the Commercial Unit except for rentals at the then current market rate and for which Administrative Agent shall have received a summary from Borrower of the other relevant terms and provisions thereof which shall be reasonably satisfactory to Administrative Agent and Administrative Agent's approval of which shall not be unreasonably withheld, conditioned or delayed. Any request for approval pursuant to this paragraph shall be deemed granted by Administrative Agent unless Administrative Agent notifies Borrower within five (5) Business Days after such request of its reason for disapproval; and Administrative Agent agrees that it shall enter into a non-disturbance agreement on its standard form, with any commercial tenant whose lease Administrative Agent approves or is deemed to have approved pursuant to this paragraph;

### not transfer the Premises or any part thereof other than in connection with the sale of Units pursuant to Approved Contracts or as otherwise permitted under the Loan Documents;

### not enter into any contract of sale of any Unit for a sales price less than the minimum sales price set forth on EXHIBIT H;

### not enter into any contract of sale of any Unit to Borrower or any affiliate of Borrower, without Administrative Agent's prior written approval, such approval not to be unreasonably withheld or delayed;

### deliver into escrow all deposits received in respect of Approved Contracts, to be held in accordance with the terms and provisions of the Approved Contracts;

### upon its receipt, deliver to Administrative Agent a certified copy of the recorded declaration of condominium; and

### submit to Lender, on a bi-monthly basis, a Condominium Sales Report and a Unit Status Report in the form of EXHIBITS I and J, respectively.

## Single Purpose; Additional Indebtedness. Not own or acquire any assets other than its interests in the Premises and other Mortgaged Property, and not conduct or engage in any business activity other than the development and operation of the Premises and Improvements; except as may be permitted hereunder or under the Mortgage or any other Loan Documents, not (i) incur any indebtedness of any kind whatsoever except for payables to be paid in the ordinary course of business, nor (ii) voluntarily or involuntarily sell, transfer, assign, pledge or encumber any of its assets, without the prior written consent of Administrative Agent, except as otherwise permitted under this Agreement or the Other Loan Documents.

# ADMINISTRATIVE AGENT; RELATIONS AMONG LENDERS

## Appointment, Powers and Immunities of Administrative Agent. Each Lender hereby irrevocably appoints and authorizes Administrative Agent to act as its agent hereunder and under any other Loan Document with such powers as are specifically delegated to Administrative Agent by the terms of this Agreement and any other Loan Document, together with such other powers as are reasonably incidental thereto. Administrative Agent shall perform its obligations under this Agreement and the other Loan Documents in good faith according to the same standard of care as that customarily exercised by Administrative Agent in administering its own real estate loans. Administrative Agent shall have no duties or responsibilities except those expressly set forth in this Agreement and any other Loan Document or required by Law, and shall not by reason of this Agreement be a fiduciary or trustee for any Lender except to the extent that Administrative Agent acts as an agent with respect to the receipt or payment of funds, nor shall Administrative Agent have any fiduciary duty to Borrower nor shall any Lender have any fiduciary duty to Borrower or any other Lender. No implied covenants, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against Administrative Agent. Neither Administrative Agent nor any of its directors, officers, employees, agents, attorneys-in-fact or affiliates shall be responsible to Lenders for any recitals, statements, representations or warranties made by Borrower or any officer, partner or official of Borrower or any other Person contained in this Agreement or any other Loan Document, or in any certificate or other document or instrument referred to or provided for in, or received by any of them under, this Agreement or any other Loan Document, or for the value, legality, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or any other document or instrument referred to or provided for herein or therein, for the perfection or priority of any lien securing the obligations hereunder or thereunder or for any failure by Borrower or any Guarantor to perform any of its obligations hereunder or thereunder. Administrative Agent may employ agents and attorneys-in-fact and shall not be responsible, except as to money or securities received by it or its authorized agents, for the negligence or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care. Neither Administrative Agent nor any of its directors, officers, employees, agents, attorneys-in-fact or affiliates shall be liable or responsible for any action taken or omitted to be taken by it or them hereunder or under any other Loan Document or in connection herewith or therewith, except for its or their own gross negligence or willful misconduct.

## Reliance by Administrative Agent. Administrative Agent shall be entitled to rely upon any certification, notice or other communication (including any thereof by telephone, telex, telegram or cable) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by Administrative Agent. Administrative Agent may deem and treat each Lender as the holder of its Note interest in the Loan for all purposes hereof and shall not be required to deal with any Person who has acquired a Participation in the Loan from a Lender. As to any matters not expressly provided for by this Agreement or any other Loan Document, Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, in accordance with instructions signed by the Required Lenders, and such instructions of the Required Lenders and any action taken or failure to act pursuant thereto shall be binding on all Lenders and any other holder of all or any portion of the Loan or Participation therein.

## Defaults. Administrative Agent shall not be deemed to have knowledge of the occurrence of a Default or of an Event of Default unless Administrative Agent has actual knowledge thereof or has received notice from a Lender or Borrower specifying such Default or Event of Default and stating that such notice is a "Notice of Default." In the event that Administrative Agent has such actual knowledge or receives such a notice of the occurrence of a Default or Event of Default, Administrative Agent shall give prompt notice thereof to Lenders. Administrative Agent shall promptly send to each Lender a copy of any notice of a Default or Event of Default that Administrative Agent sends to Borrower or Guarantor. Administrative Agent, following consultation with Lenders, shall (subject to Section 7.07) take such action with respect to such Default or Event of Default which is continuing, including with respect to the exercise of remedies or the realization on, or operation or disposition of, any or all of the Mortgaged Property or any other collateral for the Loan, as shall be directed by the Required Lenders; provided, however, that, unless and until Administrative Agent shall have received such directions, Administrative Agent may take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem to be in the best interest of Lenders. In no event shall Administrative Agent be required to take any such action that it determines to be contrary to the Loan Documents or to Law. Each of Lenders acknowledges and agrees that no individual Lender may separately enforce or exercise any of the provisions of any of the Loan Documents (including, without limitation, the Note) other than through Administrative Agent.

## Rights of Administrative Agent as Lender. With respect to its interest in the Loan, Administrative Agent in its capacity as a Lender hereunder shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not acting as Administrative Agent, and the terms "Lender" and "Lenders" shall include Administrative Agent in its capacity as a Lender. Administrative Agent and its affiliates may (without having to account therefor to any Lender) accept deposits from, lend money to (on a secured or unsecured basis), and generally engage in any kind of banking, trust or other business with, Borrower or Guarantor (and any affiliates of them) as if it were not acting as Administrative Agent.

## Sharing of Costs by Lenders; Indemnification of Administrative Agent. Each Lender shall pay its ratable share, based on its portion of the Principal Amount, of any expenses incurred (and not paid or reimbursed by Borrower after demand for payment is made by Administrative Agent) by or on behalf of Lenders in connection with any Default or Event of Default, including, without limitation, costs of enforcement of the Loan Documents and any advances to pay taxes or insurance premiums, to complete the Improvements or otherwise to preserve the lien of the Mortgage or to preserve or protect the Mortgaged Property. In the event a Lender fails to pay its share of expenses as aforesaid, and all or a portion of such unpaid amount is paid by Administrative Agent and/or one or more of the other Lenders, then the defaulting Lender shall reimburse Administrative Agent and/or the other Lender(s) for the portion of such unpaid amount paid by it or them, as the case may be, together with interest thereon at the Prime Based Rate from the date of payment by Administrative Agent and/or the other Lender(s). In addition, each Lender agrees to reimburse and indemnify Administrative Agent (to the extent it is not paid by on or behalf of Borrower, after demand for payment is made by Administrative Agent, under Section 8.19 or under the applicable provisions of any other Loan Document, but without limiting the obligation of Borrower under said Section 8.19 or such provisions), for such Lender's ratable share, based upon its portion of the Principal Amount, of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against Administrative Agent in any way relating to or arising out of this Agreement, any other Loan Document or any other documents contemplated by or referred to herein or the transactions contemplated hereby or thereby (including, without limitation, the costs and expenses which Borrower is obligated to pay under Section 8.19 or under the applicable provisions of any other Loan Document) or the enforcement of any of the terms hereof or thereof or of any such other documents or instruments; provided, however, that no Lender shall be liable for (i) any of the foregoing to the extent they arise from the gross negligence or willful misconduct of the party to be indemnified or (ii) any loss of principal or interest with respect to Administrative Agent's interest in the Loan.

## Non-Reliance on Administrative Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance on Administrative Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own analysis of the collateral for the Loan and of the credit of Borrower and Guarantor, and its own decision to enter into this Agreement, and that it will, independently and without reliance upon Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement or any other Loan Document. Administrative Agent shall not be required to keep itself informed as to the performance or observance by Borrower of this Agreement or any other Loan Document or any other document referred to or provided for herein or therein or to inspect the properties (including, without limitation, the Premises) or books of Borrower. Except for notices, reports and other documents and information expressly required to be furnished to Lenders by Administrative Agent hereunder, Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition or business of Borrower or Guarantor (or any affiliate of them) which may come into the possession of Administrative Agent or any of its affiliates.

## Failure of Administrative Agent to Act. Except for action expressly required of Administrative Agent hereunder, Administrative Agent shall in all cases be fully justified in failing or refusing to act hereunder unless it shall have received further assurances (which may include cash collateral) of the indemnification obligations of Lenders under Section 7.05 in respect of any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. If any indemnity furnished to Administrative Agent for any purpose shall, in the opinion of Administrative Agent, be insufficient or become impaired, Administrative Agent may call for an additional indemnity and cease, or not commence, the action indemnified against until such additional indemnity is furnished.

## Resignation or Removal of Administrative Agent. Administrative Agent may resign on at least thirty (30) days' written notice to Lenders and Borrower provided, however, that until substantial completion of the Improvements, consent of Required Lenders shall be a condition to such resignation. Administrative Agent may be removed at any time with cause by the Required Lenders, provided that Borrower and the other Lenders shall be promptly notified thereof. Upon such resignation or removal of Administrative Agent, the Required Lenders shall have the right to appoint a successor Administrative Agent, which successor Administrative Agent shall (provided there exists no Event of Default) be subject to Borrower's approval, such approval not to be unreasonably withheld or delayed. If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within twenty (20) days after the resignation or the Required Lenders' removal of the retiring Administrative Agent, then the retiring Administrative Agent may, on behalf of Lenders, appoint a successor Administrative Agent, which shall be one of Lenders, within ten (10) days. The Required Lenders or the retiring Administrative Agent, as the case may be, shall upon the appointment of a successor Administrative Agent promptly so notify Borrower and the other Lenders. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Article VII shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Administrative Agent. The quarterly administration fee paid to the retiring Administrative Agent shall be deemed earned by such retiring Administrative Agent only to the extent of the actual days elapsed in the quarter to which such administration fee relates, and upon appointment of a successor Administrative Agent, the retiring Administrative Agent shall pay to such successor a pro-rata portion of such quarterly administration fee based upon the number of days remaining in such quarter.

## Amendments Concerning Agency Function. Notwithstanding anything to the contrary contained in this Agreement, Administrative Agent shall not be bound by any waiver, amendment, supplement or modification of this Agreement or any other Loan Document which affects its duties, rights, and/or functions hereunder or thereunder unless it shall have given its prior written consent thereto.

## Liability of Administrative Agent. Administrative Agent shall not have any liabilities or responsibilities to Borrower on account of the failure of any Lender to perform its obligations hereunder or to any Lender on account of the failure of Borrower to perform its obligations hereunder or under any other Loan Document.

## Transfer of Agency Function. Without the consent of Borrower or any Lender, Administrative Agent may at any time or from time to time transfer its functions as Administrative Agent hereunder to any of its offices wherever located in the United States, provided that Administrative Agent shall promptly notify Borrower and Lenders thereof.

## Non-Receipt of Funds by Administrative Agent; Adjustments.

###### Unless Administrative Agent shall have received notice from a Lender or Borrower (either one as appropriate being the "Payor") prior to the date on which such Lender is to make payment hereunder to Administrative Agent of Loan proceeds or Borrower is to make payment to Administrative Agent, as the case may be (either such payment being a "Required Payment"), which notice shall be effective upon receipt, that the Payor will not make the Required Payment in full to Administrative Agent, Administrative Agent may assume that the Required Payment has been made in full to Administrative Agent on such date, and Administrative Agent in its sole discretion may, but shall not be obligated to, in reliance upon such assumption, make the amount thereof available to the intended recipient on such date. If and to the extent the Payor shall not have in fact so made the Required Payment in full to Administrative Agent, the recipient of such payment shall repay to Administrative Agent forthwith on demand such amount made available to it together with interest thereon, for each day from the date such amount was so made available by Administrative Agent until the date Administrative Agent recovers such amount, at the Federal Funds Rate.

###### If, after Administrative Agent has paid each Lender's share of any payment received or applied by Administrative Agent in respect of the Loan, that payment is rescinded or must otherwise be returned or paid over by Administrative Agent, whether pursuant to any bankruptcy or insolvency Law, sharing of payments clause of any loan agreement or otherwise, such Lender shall, at Administrative Agent's request, promptly return its share of such payment or application to Administrative Agent, together with such Lender's proportionate share of any interest or other amount required to be paid by Administrative Agent with respect to such payment or application. In addition, if a court of competent jurisdiction shall adjudge that any amount received and distributed by Administrative Agent is to be repaid, each Person to whom any such distribution shall have been made shall either repay to Administrative Agent its share of the amount so adjudged to be repaid or shall pay over the same in such manner and to such Persons as shall be determined by such court.

## Withholding Taxes. Each Lender represents that it is entitled to receive any payments to be made to it hereunder without the withholding of any tax and will furnish to Administrative Agent and Borrower such forms, certifications, statements and other documents as Administrative Agent or Borrower may reasonably request from time to time to evidence such Lender's exemption from the withholding of any tax imposed by any jurisdiction or to enable Administrative Agent or Borrower to comply with any applicable Laws relating thereto. Without limiting the effect of the foregoing, if any Lender is not created or organized under the Laws of the United States or any state thereof, such Lender will furnish to Administrative Agent and Borrower Form W‑8ECI or Form W‑8BEN of the U.S. Internal Revenue Service, or such other forms, certifications, statements or documents, duly executed and completed by such Lender, as evidence of such Lender's complete exemption from the withholding of United States tax with respect thereto. Administrative Agent and Borrower shall not be obligated to make any payments hereunder to such Lender in respect of the Loan until such Lender shall have furnished to Administrative Agent and Borrower the requested form, certification, statement or document.

## Sharing of Payments among Lenders. If a Lender shall obtain payment of any principal of its Note or of interest thereon through the exercise of any right of setoff, banker's lien or counterclaim, or by any other means (including direct payment), and such payment results in such Lender receiving a greater payment than it would have been entitled to had such payment been paid directly to Administrative Agent for disbursement to Lenders, then such Lender shall promptly purchase for cash from the other Lenders Participations in the Loan in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all Lenders shall share ratably the benefit of such payment. To such end Lenders shall make appropriate adjustments among themselves (by the resale of Participations sold or otherwise) if such payment is rescinded or must otherwise be restored.

## Possession of Documents. Each Lender shall maintain possession of its own Note. Administrative Agent shall hold all other Loan Documents and related documents in its possession and maintain separate records and accounts with respect to the Loan, reflecting the interests of Lenders in the Loan, and shall permit Lenders and their representatives access at all reasonable times to inspect such Loan Documents, related documents, records and accounts.

## Effect of a Lender's Failure to Make an Advance. In the event any Lender fails for any reason to fund the portion it is required to fund of any advance of Loan proceeds by 3:00 p.m. (Eastern time) on the second Business Day after the date established by Administrative Agent as the date such advance is to be made, such Lender shall be a "Delinquent Lender" for all purposes hereunder until and unless such delinquency is cured in accordance with the terms of and by the time permitted under Section 7.17, and the following provisions shall apply:

### Administrative Agent shall notify (such notice being referred to as the "Delinquency Notice") each Lender and Borrower of any Lender's failure to fund. Each Non-Delinquent Lender shall have the right, but in no event or under any circumstance the obligation, to fund such Delinquent Lender's portion of such advance, provided that, within twenty (20) days of the date of the Delinquency Notice (the "Election Period"), such Non-Delinquent Lender or Lenders (each such Lender, an "Electing Lender") irrevocably commit(s) by notice in writing (an "Election Notice") to Administrative Agent, the other Lenders and Borrower to fund the Delinquent Lender's portion of the advance that is the subject of the delinquency and to assume the Delinquent Lender's obligations with respect to the advancing of the entire undisbursed portion of the Delinquent Lender's Individual Loan Commitment (such entire undisbursed portion of the Delinquent Lender's Individual Loan Commitment, including its portion of the advance that is the subject of the delinquency, the "Delinquency Amount"). It shall be a condition to a Lender's right to become an Electing Lender that it concurrently commits to assume the Delinquent Lender's obligations with respect to the unadvanced portion of the Other Loan. If Administrative Agent receives more than one Election Notice within the Election Period, then the Electing Lenders sending such notices shall be deemed to have committed to fund ratable shares of the Delinquency Amount based upon the amounts of their respective Individual Loan Commitments. If there are one or more Electing Lenders and the Delinquent Lender fails to cure during the Election Period as provided in Section 7.17, then upon the expiration of the Election Period, each Electing Lender's Individual Loan Commitment shall be automatically increased by the Delinquency Amount (if there is only one Electing Lender) or such Electing Lender's ratable share, determined as aforesaid, of the Delinquency Amount (if there are two or more Electing Lenders), and the Delinquent Lender's Individual Loan Commitment shall automatically be reduced by the Delinquency Amount and the interest of Electing Lender or Lenders and the Delinquent Lender in the Note shall automatically be adjusted accordingly. Administrative Agent shall thereupon notify Borrower and each Lender of (i) the adjusted amounts of the Individual Loan Commitments and (ii) if the advance that was the subject of the delinquency was not made pursuant to Section 7.12 or was refunded by Borrower pursuant to paragraph (e) of this Section, the rescheduled date of such advance (which shall be no sooner than three (3) Business Days after such notice). In the event Administrative Agent shall have funded, pursuant to Section 7.12, the entire advance that was the subject of the delinquency (including the Delinquent Lender's portion), and Borrower shall not have refunded such advance pursuant to paragraph (e) of this Section, the Electing Lender(s) shall remit to Administrative Agent the Delinquent Lender's portion of the advance, or their ratable shares thereof, as the case may be, within three (3) Business Days of the notice provided for in the immediately preceding sentence, and Administrative Agent shall reimburse itself from such funds for making the Delinquent Lender's portion of the advance. Notwithstanding anything to the contrary contained herein, if Administrative Agent advances its own funds in respect of a Delinquent Lender's portion of an advance, Administrative Agent shall be entitled to the interest on the portion of the Principal Amount represented thereby, from the date Administrative Agent makes such advance until the date it is reimbursed therefor.

### Borrower, Administrative Agent and Lenders shall execute such modifications to the Loan Documents as shall, in the reasonable judgment of Administrative Agent, be necessary or desirable in connection with the adjustment of the amounts of Individual Loan Commitments in accordance with the foregoing provisions of this Section, provided, however, that no such modifications shall increase, in other than a de minimis manner, or otherwise affect Borrower's rights and obligations under the Loan Documents.

### In the event that no Lender elects to commit to fund the Delinquency Amount within the Election Period as provided in paragraph (a) of this Section, Administrative Agent shall, upon the expiration of the Election Period, so notify Borrower and each Lender and the provisions of Section 2.09 shall apply.

### Subject to a Delinquent Lender's right to cure as provided in Section 7.17, but notwithstanding anything else to the contrary contained in this Agreement, the Delinquent Lender's interest in, and any and all amounts due to a Delinquent Lender under, the Loan Documents (including, without limitation, all principal, interest, fees and expenses) shall be subordinate in lien priority and to the repayment of all amounts (including, without limitation, interest) then or thereafter due or to become due to the Non-Delinquent Lenders under the Loan Documents (including future advances), and the Delinquent Lender thereafter shall have no right to participate in any discussions among and/or decisions by Lenders hereunder and/or under the other Loan Documents. Further, subject to Section 7.17, any Delinquent Lender shall be bound by any amendment to, or waiver of, any provision of, or any action taken or omitted to be taken by Administrative Agent and/or the Non-Delinquent Lenders under, any Loan Document which is made subsequent to the Delinquent Lender's becoming a Delinquent Lender.

### If, pursuant to the operation of Section 7.12, an advance of Loan proceeds is made without Administrative Agent's receipt of a Delinquent Lender's portion thereof, in addition to Borrower's obligations under Section 7.12, Borrower shall, upon demand of Administrative Agent, refund the entire such advance to Administrative Agent. Borrower's failure to do so within ten (10) days of such demand shall, notwithstanding anything to the contrary contained herein or in the Mortgage, constitute an Event of Default under the Mortgage. Upon its receipt of such funds from Borrower, Administrative Agent shall promptly remit to each Non-Delinquent Lender its appropriate share thereof.

## Cure by Delinquent Lender. A Delinquent Lender may cure a delinquency arising out of its failure to fund its required portion of any advance if, within the Election Period, it remits to Administrative Agent its required portion of such advance (together with interest thereon at the Default Rate from the date such advance was to have been made if such advance was made by Administrative Agent and not refunded by Borrower pursuant to either Section 7.12 or paragraph (e) of Section 7.16), in which event Administrative Agent shall so notify Borrower and the Non-Delinquent Lenders (i) of its receipt of such funds and (ii)(A) if the advance that was the subject of the delinquency shall not have been made (or shall have been refunded by Borrower pursuant to paragraph (e) of Section 7.16), of the rescheduled date of the advance (which shall be no sooner then three (3) Business Days after such notice) or (B) if Administrative Agent shall have funded the entire advance that was the subject of the delinquency (including the Delinquent Lender's portion) and Borrower shall not have refunded such advance pursuant to paragraph (e) of Section 7.16, of its intention to reimburse itself from funds received from the Delinquent Lender (which reimbursement is hereby authorized) for funding the Delinquent Lender's required portion of the advance. In the event any Delinquent Lender cures a delinquency prior to the expiration of the Election Period (or thereafter with the consent of all of the Non-Delinquent Lenders), such Delinquent Lender nonetheless shall be bound by any amendment to or waiver of any provision of, or any action taken or omitted to be taken by Administrative Agent and/or the Non-Delinquent Lenders under, any Loan Document which is made subsequent to that Lender's becoming a Delinquent Lender and prior to its curing the delinquency as provided in this Section, provided that such amendment or waiver of action was taken in accordance with the provisions of this Agreement. A Delinquent Lender shall have absolutely no right to cure any delinquency after the expiration of the Election Period unless all Non-Delinquent Lenders, in their sole discretion, elect to permit such cure.

## Delinquent Lender Not Excused. Nothing contained in Sections 7.16 or 7.17 shall release or in any way limit a Delinquent Lender's obligations as a Lender hereunder and/or under any other of the Loan Documents or impair Borrower's right to exercise its remedies against a Delinquent Lender. Further, a Delinquent Lender shall indemnify and hold harmless Administrative Agent and each of the Non-Delinquent Lenders from any claim, loss, or costs incurred by Administrative Agent and/or the Non-Delinquent Lenders as a result of a Delinquent Lender's failure to comply with the requirements of this Agreement, including, without limitation, any and all additional losses, damages, costs and expenses (including, without limitation, attorneys' fees) incurred by Administrative Agent and any Lender as a result of and/or in connection with (i) a Non-Delinquent Lender's acting as an Electing Lender, (ii) any enforcement action brought by Administrative Agent against a Delinquent Lender, and (iii) any action brought against Administrative Agent and/or Lenders. The indemnification provided above shall survive any termination of this Agreement.

## Notices Regarding Delinquent Lender. Notices by Administrative Agent or Lenders pursuant to Sections 7.16 or 7.17 may be by telephone (to be promptly confirmed in writing).

## Replacement Lender. In the event any Lender becomes a Delinquent Lender and none of the other Lenders elects to be an Electing Lender pursuant to Section 7.16, Borrower shall have the right, provided there exists no Default or Event of Default, to cause another financial institution reasonably acceptable to the Required Lenders to assume the Delinquent Lender's obligations with respect to the Delinquency Amount on the then-existing terms and conditions of the Loan Documents (such replacement institution, a "Replacement Lender"). It shall be a condition to such assumption that the Replacement Lender concurrently assumes the obligations of the Delinquent Lender with respect to the unfunded portion of the Other Loans. Such assumption shall be pursuant to a written instrument reasonably satisfactory to the Required Lenders. Upon such assumption, the Replacement Lender shall become a "Lender" for all purposes hereunder, with an Individual Loan Commitment in an amount equal to the Delinquency Amount, and the Delinquent Lender's Individual Loan Commitment shall automatically be reduced by the Delinquency Amount.

Borrower, Administrative Agent and Lenders shall execute such modifications to the Loan Documents as shall, in the reasonable judgment of Administrative Agent, be necessary or desirable in connection with the substitution of Lenders in accordance with the foregoing provisions of this Section, provided, however, that no such modifications shall increase in other than a de minimis manner, or otherwise affect Borrower's rights and obligations under the Loan Documents.

Lenders shall reasonably cooperate with Borrower's attempts to obtain a Replacement Lender, but they shall not be obligated to modify the Loan Documents in connection therewith, other than modifications pursuant to the immediately preceding paragraph. As part of the first advance of Loan proceeds following the admission of the Replacement Lender, the Replacement Lender shall advance to Borrower, subject to the satisfaction of all conditions of this Agreement, an amount equal to the Direct and Indirect Costs paid by Borrower pursuant to clause (ii) of Section 2.09.

# GENERAL CONDITIONS AND PROVISIONS

## Loan Balancing. If at any time Administrative Agent notifies Borrower that, in Administrative Agent's sole judgment exercised in good faith, the undisbursed balance of the Loan is insufficient to pay the remaining Direct and Indirect Costs, Borrower shall, at its option, either (i) within ten (10) days of Administrative Agent's notification as aforesaid, deposit with Administrative Agent an amount equal to such deficiency which shall be held in an interest-bearing account, which Administrative Agent shall from time to time apply, or allow Borrower to apply, to such Costs or (ii) pay for such Costs, as incurred, in the amount of such deficiency so that the amount of the Loan which remains to be disbursed shall be sufficient to pay all remaining Direct and Indirect Costs, and Borrower shall furnish Administrative Agent with such evidence thereof as Administrative Agent shall reasonably require. Borrower hereby agrees that Administrative Agent shall have a lien on and security interest in, for the benefit of Lenders, any sums deposited pursuant to clause (i) above and that Borrower shall have no right to withdraw any such sums except for the payment of the aforesaid Costs as reasonably approved by Administrative Agent. Lenders shall have no obligation to make any further advances of proceeds of the Loan until the sums required to be deposited pursuant to clause (i) above have been exhausted or until Borrower has actually paid such Direct and Indirect Costs pursuant to clause (ii) above, as the case may be, and, in either such case, the Loan is back "in balance". Any such sums not used as provided in said clause (i) shall be released to Borrower when and to the extent that Administrative Agent determines that the amount thereof is more than the excess, if any, of the total remaining Costs of completion of the Improvements over the undisbursed balance of the Loan; provided, however, that should an Event of Default occur, Administrative Agent shall, at the option of the Required Lenders, apply such amounts either to the Costs of completion of the Improvements or to the immediate reduction of outstanding principal and/or interest under the Note.

## Advance Not Waiver. Any advance of Loan proceeds hereunder made prior to or without the fulfillment by Borrower of all of the conditions precedent thereto, whether or not known to Administrative Agent or Lenders, shall not constitute a waiver by Administrative Agent or Lenders of the requirement that all conditions, including the non-performed conditions, shall be required with respect to all future advances, provided, however, the conditions precedent set forth in Section 4.01 and not otherwise set forth in Sections 4.02, 4.03 and 4.04 shall not be conditions precedent to advance after the Initial Advance..

## No Third-Party Beneficiaries. This Agreement is solely for the benefit of Lenders, Administrative Agent and Borrower. All conditions of the obligations of Lenders to make advances hereunder are imposed solely and exclusively for the benefit of Lenders and may be freely waived or modified in whole or in part by Lenders at any time if in their sole discretion they deem it advisable to do so, and no Person other than Borrower (provided, however, that all conditions have been satisfied) shall have standing to require Lenders to make any Loan advances or to be a beneficiary of this Agreement or any advances to be made hereunder.

## Authorization to Make Direct Advances. During the existence of any Event of Default, Borrower hereby irrevocably authorizes Lenders to advance any undisbursed Loan proceeds directly to the Construction Manager, Major Subcontractors and other Persons to pay for completion of the Improvements. All such direct advances shall satisfy pro tanto the obligations of Lenders to Borrower hereunder regardless of the disposition thereof by the Construction Manager, any Major Subcontractor or other Person.

## Authorization to Advance for Interest. Borrower hereby irrevocably authorizes Lenders to disburse proceeds of the Loan to pay interest accrued on the Note as it comes due, or, after the occurrence and during the continuance of an Event of Default, to satisfy any of the conditions hereof, including, without limitation, the payment of the fees and expenses of Lenders' Counsel and the Construction Consultant.

## Concerning Irrevocable Authorizations. Any and all advances made at any time by Lenders pursuant to the irrevocable authorizations granted by the sections above shall require no further direction, authorization or request for disbursement from Borrower and, except in the case of advances under Section 8.04 and non-interest advances under Section 8.05, may be made whether or not there exists a Default or Event of Default. Any and all such disbursements shall be added to the outstanding principal balance evidenced by the Note and shall be secured by the Mortgage. The aforesaid authorizations shall (i) not prevent Borrower from paying the contractors and other Persons, from paying the interest, or from satisfying the conditions and obligations referred to in said Sections, out of its own funds, (ii) in no event be construed so as to relieve Borrower or others from their obligations to pay such contractors or other Persons, to pay interest as and when due under the Note, or to satisfy such conditions and obligations and (iii) except in the case of advances pursuant to Section 8.06, in no event obligate Lenders to disburse proceeds of the Loan for any such purposes.

## Ratification of Requisition by Acceptance of Advance. By its acceptance of any advance of Loan proceeds hereunder, Borrower shall be bound in all respects by the Requisition submitted on its behalf in connection therewith with the same force and effect as if Borrower had itself executed and submitted the Requisition and whether or not the Requisition is executed and/or submitted by an authorized Person.

## Documentation Etc. Satisfactory. All documentation and proceedings deemed by Administrative Agent or Lenders' Counsel to be necessary or required in connection herewith and the documents relating hereto shall be subject to the prior reasonable approval of, and be reasonably satisfactory to, both of them as to form and substance. In addition, the Persons responsible for the execution and delivery of, and signatories to, all of such documentation, shall be reasonably acceptable to, and subject to the reasonable approval of, Administrative Agent and Lenders' Counsel. Administrative Agent or Lenders' Counsel shall receive copies, certified if requested by either of them, of all documents that they may require in connection with the transactions contemplated hereby.

## Administrative Agent's Determination Conclusive. Administrative Agent shall, at all times, be free to independently establish to its satisfaction and in its absolute discretion the existence or nonexistence of any fact or facts the existence or nonexistence of which is a condition hereof.

## Notices. Except as expressly provided otherwise, all notices, demands, consents, approvals and statements required or permitted hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally, three (3) Business Days after mailing by registered or certified mail, postage prepaid, or one (1) Business Day after delivery to a nationally recognized overnight courier service providing evidence of the date of delivery, addressed to a party at its address on the signature page hereof or of the applicable Assignment and Assumption Agreement, or at such other address of which a party shall have notified the party giving such notice in writing in accordance with the foregoing requirements.

## Amendments and Waivers. Administrative Agent and Lenders agree that Administrative Agent shall be the day-to-day contact for Borrower with respect to the Loan. No amendment or material waiver of any provision of this Agreement or any other Loan Document, nor consent to any material departure by Borrower or any Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the party against whom such amendment, waiver or consent is sought to be enforced (it being understood, however, that the signatures of the Required Lenders and, solely for purposes of its acknowledgement thereof, Administrative Agent, shall be sufficient to bind Lenders to any such amendment, waiver or consent), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall, unless in writing and signed by all Lenders (subject, however, to the provisions of Section 7.16(d)), do any of the following: (i) reduce the principal of, or interest on, the Note or any fees due hereunder or any other amount due hereunder or under any other Loan Document; (ii) postpone any date fixed for any payment of principal of, or interest on, the Note or any fees due hereunder or under any other Loan Document; (iii) change the definition of Required Lenders; (iv) release any material portion of the Mortgaged Property or other collateral for the Loan other than in accordance with the Loan Documents; (v) amend this Section or any other provision requiring the consent of all Lenders; (vi) release, in whole or in part, any Guarantor other than in accordance with the Loan Documents; (vii) except as otherwise provided in this Agreement, change the amount of any Individual Loan Commitment; (viii) change the identity of the Construction Manager or the property management company; or (ix) increase the Loan Amount. Without limiting the foregoing, acceptance by Administrative Agent or Lenders of any sum required to be paid pursuant hereto or to any other Loan Document, after its due date, or in an amount less than the sum then due, shall not constitute a waiver by Administrative Agent or Lenders of their right to require prompt payment when due of all other such sums or to declare a default or to exercise such other rights provided herein or in the other Loan Documents for such late or reduced payment.

All communications from Administrative Agent to Lenders requesting Lenders' determination, consent, approval or disapproval (i) shall be given in the form of a written notice to each Lender, (ii) shall be accompanied by or include a description or copy of the matter or thing as to which such determination, approval, consent or disapproval is requested and (iii) shall include Administrative Agent's recommended course of action or determination in respect thereof. Each Lender shall reply promptly, but in any event within ten (10) Business Days (or five (5) Business Days with respect to any decision to accelerate or stop acceleration of the Loan) after receipt of the request therefor by Administrative Agent (the "Lender Reply Period"). Unless a Lender shall give written notice to Administrative Agent that it objects to the recommendation or determination of Administrative Agent (together with a written explanation of the reasons behind such objection) within the Lender Reply Period, such Lender shall be deemed to have approved or consented to such recommendation or determination.

## Assignment; Participation. Any Non-Delinquent Lender may at any time grant to one or more banks or other institutions (each a "Participant") participating interests in its Pro Rata Share of the Loan (the "Participations"). In the event of any such grant by a Lender of a Participation to a Participant, such Lender shall remain responsible for the performance of its obligations hereunder, and Borrower and Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder. Any agreement pursuant to which any Lender may grant a Participation shall provide that such Lender shall retain the sole right and responsibility to enforce the obligations of Borrower hereunder and under any other Loan Document, including, without limitation, the right to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document; provided, however, that such participation agreement may provide that such Lender will not agree to any modification, amendment or waiver described in clauses (i) through (viii) of Section 8.12 without the consent of the Participant.

Upon request by Borrower, each Lender agrees to provide Borrower with notice of all Participations sold by such Lender. Borrower agrees to provide all assistance reasonably requested by a Lender to enable such Lender to sell Participations as aforesaid, or make assignments of its interest in the Loan as hereinafter provided in this Section.

A Lender may at any time assign to any bank or other institution with the consent of Administrative Agent and notice to Borrower, which consent shall not be unreasonably withheld or delayed (such assignee, a "Consented Assignee"), or to one or more banks or other institutions which are majority owned subsidiaries of a Lender or of the parent of a Lender (each Consented Assignee or subsidiary bank or institution, an "Assignee") all or a proportionate part of all of its rights and obligations under this Agreement and the Note, and such Assignee shall assume rights and obligations, pursuant to an Assignment and Assumption Agreement executed by such Assignee and the assigning Lender, provided that, (i) concurrently with such assignment, the assigning Lender also assigns, and the Assignee assumes, a proportionate part of the assigning Lender's rights and obligations under the Other Loans and (ii) after giving effect to such assignment (and the related assignment with respect to the Other Loans), in each case, the Assignee's aggregate portion of the Loan and the Other Loans and, in the case of a partial assignment of a Lender's interest, the assigning Lender's aggregate portion of the Loan and the Other Loans will each be equal to or greater than $3,000,000. Upon (i) execution and delivery of such instrument, (ii) payment by such Assignee to the assigning Lender of an amount equal to the purchase price agreed between such Lender and such Assignee and (iii) payment by such Assignee to Administrative Agent of a fee, for Administrative Agent's own account, in the amount of $3,500, such Assignee shall be a party to this Agreement and shall have all the rights and obligations of a Lender as set forth in such Assignment and Assumption Agreement, and the assigning Lender shall be released from its obligations hereunder to a corresponding extent, and no further consent or action by any party shall be required. If the Assignee is not incorporated under the Laws of the United States or a state thereof, it shall, prior to the date of the assignment, deliver to Borrower and Administrative Agent certification as to exemption from deduction or withholding of any United States federal income taxes in accordance with Section 7.13.

Borrower, Administrative Agent and Lenders shall execute such modifications to the Loan Documents as shall, in the reasonable judgment of Administrative Agent, be necessary or desirable in connection with assignments in accordance with the foregoing provisions of this Section, provided, however, that no such modifications shall increase, in other than a de minimis manner, or otherwise affect Borrower's rights and obligations under the Loan Documents.

Notwithstanding the foregoing, Administrative Agent's Pro Rata Share of the Loan shall at no time be less than the Pro Rata Share of any other Lender.

Any Lender may at any time freely assign all or any portion of its rights under this Agreement and its Note to a Federal Reserve Bank. No such assignment shall release the transferor Lender from its obligations hereunder.

Borrower recognizes that in connection with a Lender's selling of Participations or making of assignments, any or all documentation, financial statements, appraisals and other data, or copies thereof, relevant to Borrower, Guarantor or the Loan may be exhibited to and retained by any such Participant or Assignee or prospective Participant or Assignee. A Lender's delivery of any financial statements and appraisals to any such Participant or Assignee or prospective Participant or Assignee shall be done on a confidential basis.

## Setoff. In addition to (and without limitation of) any right of setoff, bankers' lien or counterclaim Administrative Agent or any Lender may otherwise have, Administrative Agent and each Lender shall be entitled, at its option, to offset balances (general or special, time or demand, provisional or final) held by it for the account of Borrower at any of Administrative Agent's or such Lender's offices against any amount payable by Borrower to Administrative Agent or such Lender hereunder or under any other Loan Document which is not paid when due (regardless of whether such balances are then due to Borrower), in which case it shall promptly notify Borrower and (in the case of a Lender) Administrative Agent thereof; provided, however, that Administrative Agent's or such Lender's failure to give such notice shall not affect the validity thereof.

## Successors and Assigns. Except as herein provided, this Agreement shall be binding upon and inure to the benefit of Borrower, Administrative Agent and Lenders and their respective heirs, personal representatives, successors and assigns. Notwithstanding the foregoing, Borrower may not assign, transfer or set over to another, in whole or in part, all or any part of its benefits, rights, duties and obligations hereunder, including, but not limited to, performance of and compliance with conditions hereof and the right to receive the proceeds of current or future advances.

## Severability. The provisions hereof are intended to be severable. Any provisions hereof, or the application thereof to any Person or circumstance, which, for any reason, in whole or in part, is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof (or the remaining portions of such provision) or the application thereof to any other Person or circumstance, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision (or portion thereof) or the application thereof to any Person or circumstance in any other jurisdiction.

## Non-Waiver; Remedies Cumulative. No failure or delay on Administrative Agent's or any Lender's part in exercising any right, remedy, power or privilege hereunder or under any of the other Loan Documents or provided by Law (hereinafter in this Section, each a "Remedy") shall operate as a waiver of any such Remedy or shall be deemed to constitute Administrative Agent's or any Lender's acquiescence in any default by Borrower or Guarantor under any of said documents. A waiver by Administrative Agent or any Lender of any Remedy on any one occasion shall not be construed as a bar to any other or future exercise thereof or of any other Remedy. The Remedies are cumulative, may be exercised singly or concurrently and are not exclusive of any other Remedies.

## Certain Waivers. Borrower hereby irrevocably and unconditionally waives (i) promptness and diligence except to the extent otherwise provided herein or in the other Loan Documents; (ii) notice of any actions taken by Administrative Agent or any Lender hereunder or under any other Loan Document or any other agreement or instrument relating hereto or thereto except to the extent otherwise provided herein, (iii) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of Borrower's obligations hereunder and under the other Loan Documents, the omission of or delay in which, but for the provisions of this Section, might constitute grounds for relieving Borrower of any of its obligations hereunder or under the other Loan Documents except to the extent otherwise provided herein or in the other Loan Documents, (iv) any requirement that Administrative Agent or any Lender protect, secure, perfect or insure any lien on any collateral for the Loan or exhaust any right or take any action against Borrower, Guarantor or any other Person or against any collateral for the Loan, (v) any right or claim of right to cause a marshalling of Borrower's assets and (vi) all rights of subrogation or contribution, whether arising by contract or operation of law or otherwise by reason of payment by Borrower pursuant hereto or to any other Loan Document. BORROWER FURTHER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY OR ON BEHALF OF ADMINISTRATIVE AGENT OR LENDERS WITH RESPECT TO THIS AGREEMENT, THE NOTE OR OTHERWISE IN RESPECT OF THE LOAN, ANY AND EVERY RIGHT BORROWER MAY HAVE TO (W) INJUNCTIVE RELIEF, (X) A TRIAL BY JURY, (Y) INTERPOSE ANY COUNTERCLAIM THEREIN, OTHER THAN A COMPULSORY COUNTERCLAIM, AND (Z) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING CONTAINED IN THE IMMEDIATELY PRECEDING SENTENCE SHALL PREVENT OR PROHIBIT BORROWER FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST ADMINISTRATIVE AGENT OR LENDERS WITH RESPECT TO ANY ASSERTED CLAIM.

## Expenses; Indemnification. Borrower covenants and agrees to pay all costs, expenses and charges (including, without limitation, all fees and charges of engineers, appraisers, the Construction Consultant and Lenders' Counsel and, in the case of (ii) below, counsel to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) incurred by Administrative Agent or any Lender in connection with (i) the preparation for and consummation of the transactions contemplated hereby or for the performance hereof and of the other Loan Documents, and for any services which may be required in addition to those normally and reasonably contemplated hereby and (ii) the enforcement hereof or of any or all of the other Loan Documents; provided, however, that Borrower shall not be responsible for costs, expenses and charges incurred by Administrative Agent and Lenders in connection with the administration or syndication of the Loan (other than the administration fee required by the Supplemental Fee Letter and the reasonable fees and expenses of the Construction Consultant). In connection with the foregoing, Lenders agree, to the extent practicable, to appoint a single counsel and local counsel, selected by Administrative Agent, to act on behalf of all Lenders in connection with the enforcement of the Loan Documents or the indemnity hereunder. If Borrower fails to pay promptly any costs, charges or expense required to be paid by it as aforesaid, and Administrative Agent or any Lender upon ten (10) days' prior written notice to Borrower pays such costs, charges or expenses, Borrower shall reimburse Administrative Agent or such Lender, as appropriate, on demand for the amounts so paid, together with interest thereon at the Default Rate. Borrower further agrees to indemnify Administrative Agent and each Lender and their respective directors, officers, employees and agents from, and hold each of them harmless against, (x) any and all losses arising out of or by reason of any investigation or litigation or other proceedings (including any threatened investigation or litigation or other proceedings) relating to any actual or proposed use by Borrower of the proceeds of the Loan, including, without limitation, the reasonable fees and disbursements of counsel incurred in connection with any such investigation, litigation or other proceedings and (y) any and all claims, actions, suits, proceedings, costs, expenses, losses, damages and liabilities of any kind, including in tort, penalties and interest, arising out or by reason of any matter relating, directly or indirectly, to the Mortgage or the ownership, condition, development, construction, sale, rental or financing of the Premises or Improvements or any part thereof (but excluding any such losses, liabilities, claims, damages or expenses incurred solely by reason of the gross negligence or willful misconduct of or willful breach of this Agreement by the party to be indemnified or costs and expenses that are not payable by Borrower to or for the benefit of the indemnified parties pursuant to this Agreement or the other Loan Documents). Subject to Section 9.03 hereof, the obligations of Borrower under this Section and under Sections 3.01, 3.03 and 6.07 shall survive the repayment of all amounts due under or in connection with any of the Loan Documents and the termination of the Individual Loan Commitments.

## Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing any such counterpart.

## Lenders' Right to Terminate. In the event Borrower shall not have satisfied the conditions precedent to its entitlement to advances of Loan proceeds hereunder within sixty (60) days of the date hereof, the Required Lenders shall have the absolute right, at their option, to terminate Lenders' obligations to Borrower under this Agreement and the loan commitment represented hereby. In the event of such termination, the Required Lenders shall direct Administrative Agent to send notice thereof to the other Lenders and Borrower.

## Trust Fund. This Agreement is subject to the trust fund provisions of the Lien Law, including, without limitation, Section 13 thereof.

## Governing Law; Jurisdiction. This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the Laws of the State of New York (without giving effect to New York's principles of conflicts of law). Borrower, Administrative Agent and each Lender hereby irrevocably submit to the non-exclusive jurisdiction of any New York State or Federal court sitting in The City of New York (or any county in New York State where any portion of the Mortgaged Property is located) over any suit, action or proceeding arising out of or relating to this Agreement.

## Integration. The Loan Documents and the Supplemental Fee Letter constitute the entire agreement among Administrative Agent, Borrower and Lenders relating to the transactions contemplated thereby (except with respect to agreements among Lenders or with Administrative Agent relating solely to compensation, consideration and the syndication of the Loan) and supersede any prior oral or written statements or agreements with respect to such transactions.

## Gross-Up For Taxes. Without in any way limiting the effect of Section 7.13, all payments made by Borrower under this Agreement and the Note shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, excluding income taxes and franchise or other taxes (imposed in lieu of income taxes) imposed on a Lender as a result of a present or former connection between such Lender and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from such Lender's having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or the Note). If any such non-excluded taxes, levies, imposts, duties, charges, fees, deductions or withholdings ("Non-Excluded Taxes") is required to be withheld from any amounts payable to such Lender hereunder or under the Note, the amounts so payable to such Lender shall be increased to the extent necessary to yield to such Lender (after payment of all Non-Excluded Taxes) interest or any such other amounts payable with respect to the Loan at the rates or in the amounts specified in this Agreement and the Note; provided, however, that Borrower shall not be required to increase any such amounts payable to such Lender if such Lender is not organized under the Laws of the United States or a state thereof and such Lender fails to comply with the requirements of Section 7.13. Whenever any Non-Excluded Taxes are payable by Borrower, as promptly as possible thereafter Borrower shall send to Administrative Agent for the account of such Lender a certified copy of an original official receipt received by Borrower showing payment thereof. If Borrower fails to pay any Non-Excluded Taxes when due to the appropriate taxing authority or fails to remit to Administrative Agent the required receipts or other required documentary evidence, Borrower shall indemnify such Lender for any incremental taxes, interest or penalties that may become payable by such Lender as a result of any such failure. The agreements in this Section shall survive the termination of this Agreement and the payment of the Note and all other amounts payable hereunder.

# PARTICULAR PROVISIONS

The foregoing Articles of this Agreement are subject to the following further provisions:

## Subordination of Lien to Condominium Declaration. Provided there exists no Event of Default, Administrative Agent shall, on Borrower's written request, subordinate the liens of the Mortgage and the Other Mortgages to a declaration of condominium for the Premises and Improvements and shall execute the appropriate instruments (reasonably satisfactory to Administrative Agent in all respects) in recordable form to effect such subordination, upon the satisfaction of the following conditions:

### Administrative Agent shall have received and approved (which approval shall not be unreasonably withheld, conditioned or delayed) the Condominium Documents, which shall be in proper form for recording or filing, as necessary, in the appropriate offices;

### The Condominium Documents shall be accepted for filing by the Attorney General’s office within three (3) months of the date hereof;

### (c) the title policy or policies insuring the Mortgage and the Other Mortgages shall have been endorsed to provide a condominium endorsement and non-impairment of lien endorsement (which endorsements shall not extend the effective date of the policy(ies));

###  (d) Borrower shall have caused to be duly executed and delivered to Administrative Agent (i) an Assignment of Declarant's Rights in the form of EXHIBIT K, (ii) conditional resignations of the officers and members of the Board of Directors of the applicable condominium association in the form of EXHIBITS L and M, respectively, to the extent designated by Borrower/Declarant.

### Administrative Agent shall have received an opinion from the Condominium's counsel to the effects that (i) the Condominium Documents reasonably satisfy all applicable requirements of Governmental Authorities, (ii) all material requirements of any applicable Law have been duly satisfied with respect to the creation of the Condominium by Borrower in New York State and (iii) the documents referred to in paragraph (c) of this Section have each been duly authorized, executed and delivered by the respective parties thereto and are enforceable against said parties in accordance with their respective terms subject to customary limitations;

### the condominium association which shall be created by the Condominium Documents shall have furnished to Administrative Agent at no cost or expense to Administrative Agent, a blanket fire insurance policy with extended coverage naming Administrative Agent, said condominium association, and owners of each Unit, as their respective interests may appear, as the insureds, covering all of the Improvements; said fire insurance shall at all times be an amount equal to 100% of the insurable value of the Improvements and shall otherwise comply with the applicable conditions contained in the Mortgage and the Other Mortgages and elsewhere in this Agreement; and

### Administrative Agent shall have received copies, certified by Borrower to be true and complete, of Approved Contracts theretofore entered into.

## Release of Units. Provided there exists no Event of Default, Administrative Agent shall from time to time release Units from the liens of the Mortgage and the Other Mortgages upon the satisfaction of the following conditions by delivering to Borrower a duly executed and acknowledged release and lien of the Mortgage and the Other Mortgages in recordable form and a UCC‑3 release of security interest: (a) Borrower shall have fully complied with the provisions of the immediately preceding Section, (b) Administrative Agent shall have received not less than five (5) days' prior written notice of the proposed release, (c) contemporaneously with such release, there shall be a sale of such Unit pursuant to the contract provided for in clause (i) below and (d) Administrative Agent shall have received all of the following with respect to each Unit to be released:

an Approved Contract, certified by Borrower to be a true and complete statement of the terms of sale with respect thereto;

the greater of the amount set forth on EXHIBIT H for the Unit to be released or the actual net sales price after deducting for transaction and closing costs not to exceed 10% of the gross sales price;

a temporary or permanent certificate of occupancy covering the subject Unit; and

such other documents, certificates, opinions or assurances as Administrative Agent may reasonably request.

Amounts received by Lender pursuant to this Section shall be applied to the payment of accrued and unpaid interest, outstanding principal or other sums due Lender under the Loan and/or the loan secured by the Other Mortgages in such order and in such amounts as Administrative Agent shall elect, provided, however, that if no Event of Default exists, such amounts shall first be applied in reduction of outstanding principal under the Other Mortgages until repaid in full and thereafter in reduction of outstanding principal under the Mortgage.

## Exculpation. The provisions of Section 3.17 of the Mortgage are incorporated by reference as if fully set forth herein.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the day and year first above written, the execution hereof by Borrower constituting a certification by Borrower that the representations and warranties made in Article V are true and correct as of the date hereof and that the party executing on behalf of Borrower duly holds and is incumbent in the position indicated under his or her name and that each Requisition shall constitute the affirmation of Borrower that at the time thereof said representations and warranties are true and correct.

BORROWER

Address for notices:

(as Lender and Administrative Agent)

By

Address for notices and Applicable Lending Office:

ADD NOTARY

EXHIBIT A

N.Y. LIEN LAW STATEMENT

STATE OF NEW YORK )
 : ss.:
COUNTY OF NEW YORK )

The undersigned, being duly sworn, deposes and says that:

|  |
| --- |
| 1. He resides at the address shown at the foot hereof and holds the office in Borrower indicated beneath his signature.
 |
| 1. The amount of the Loan is:
 | $ |
| 1. The consideration for the Loan to be paid and the other expenses heretofore incurred or to be incurred in connection with and paid out of the Loan are (or are estimated to be) as follows:
 |  |
| Commitment fee, if any, for the Loan: $\_\_\_\_\_\_\_\_\_\_ |  |
| Arrangement fee $\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |
| Examination of title and recording fees: $\_\_\_\_\_\_\_\_\_\_\_ |  |
| Mortgage recording taxes: $\_\_\_\_\_\_\_\_\_ |  |
| Fees of Lender's Construction Consultant: $\_\_\_\_\_\_\_\_\_ |  |
| Fees of Lenders' Counsel: $\_\_\_\_\_\_\_\_\_\_ |  |
| Interest on the Building Loan Mortgage(s): $\_\_\_\_\_\_\_\_\_ |  |
| Appraisal $\_\_\_\_\_\_\_\_\_\_\_ |  |
| Environmental Site Assessment $\_\_\_\_\_\_\_\_\_ |  |
|  Total: | $\_\_\_\_\_\_\_\_ |
| 1. The amount, if any, to be advanced from the Loan to repay amounts previously advanced to Borrower pursuant to Notices of Lending for costs of the Improvements is:
 | $\_\_\_\_\_ |
| 1. The amount, if any, to be advanced from the Loan to reimburse Borrower for costs of the Improvements expended by Borrower after the commencement of the Improvements but prior to the date hereof are itemized as follows:
 |  |
|  Description of Cost of Improvements   Amount (a) Demolition $\_\_\_\_\_\_\_\_\_\_ (b) General Conditions $\_\_\_\_\_\_\_ (c) Construction Management Fee $\_\_\_\_\_\_\_\_\_\_ (d) Fees and Permits $\_\_\_\_\_\_\_\_\_ (e) Construction Insurance $\_\_\_\_\_\_\_ |  |
|  Total: | $\_\_\_\_\_\_ |
| 1. The estimated amount to be advanced from the Loan for indirect costs of the Improvements which may become due and payable after the date hereof and during the construction of the Improvements (such as bond and insurance premiums, fees of architects, engineers and surveyors, ground rents, taxes, assessments and water and sewer rents) is:
 | $\_\_\_\_\_\_\_ |
| 1. The net sum available to Borrower from the Loan to pay contractors, subcontractors, laborers and materialmen for the Improvements is:
 | $\_\_\_\_\_\_\_\_\_ |
| 1. This affidavit is made pursuant to and in compliance with Section 22 of the Lien Law of the State of New York.
 |
| 1. If Borrower is a corporation, partnership or limited liability company, this statement is verified by deponent and not by Borrower because Borrower is a corporation, partnership or limited liability company of which the deponent is an officer, member or general partner.
 |
| 1. The facts stated above and any costs itemized on this statement are true, to the knowledge of the undersigned.
 |

Sworn to before me this \_\_\_\_\_\_\_
day of \_\_\_\_\_\_\_\_\_\_, 200\_\_. (Name and Title)

 Residing at:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

EXHIBIT B

ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of \_\_\_\_\_\_\_\_\_\_, 200\_\_, between [NAME OF ASSIGNING BANK] ("Assignor") and [NAME OF ASSIGNEE] ("Assignee").

Preliminary Statement

1. This Assignment and Assumption Agreement (this "Agreement") relates to the Building Loan Agreement (as the same may be amended from time to time, the "Loan Agreement") dated \_\_\_\_\_\_\_\_\_\_, 2001 among \_\_\_\_\_\_\_\_\_\_\_("Borrower"), the lender(s) party thereto (each a "Lender" and, collectively, "Lenders") and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Administrative Agent"). All capitalized terms not otherwise defined herein shall have the respective meanings set forth in the Loan Agreement.
2. Subject to the terms and conditions set forth in the Loan Agreement, Assignor has made an Individual Loan Commitment to Borrower in an aggregate principal amount of $\_\_\_\_\_\_\_\_\_\_ ("Assignor's Loan Commitment").
3. The aggregate outstanding principal amount under Assignor's Loan Commitment at the commencement of business on the date hereof is $\_\_\_\_\_\_\_\_\_\_.
4. Assignor desires to assign to Assignee all of the rights of Assignor under the Loan Agreement in respect of a portion of Assignor's Loan Commitment and the loan made pursuant thereto, such portion being in an amount equal to $\_\_\_\_\_\_\_\_\_\_ (the "Assigned Loan and Commitment"), of which $\_\_\_\_\_\_\_\_\_\_ is currently outstanding and $\_\_\_\_\_\_\_\_\_\_ is still to be disbursed to Borrower pursuant to the Loan Agreement; and Assignee desires to accept assignment of such rights and assume the corresponding obligations from Assignor on such terms.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, the parties hereto agree as follows:

SECTION 1. Assignment. Assignor hereby assigns and sells to Assignee all of the rights of Assignor under the Loan Agreement in and to the Assigned Loan and Commitment, and Assignee hereby accepts such assignment from Assignor and assumes all of the obligations of Assignor under the Loan Agreement with respect to the Assigned Loan and Commitment, including, without limitation, Assignor's obligations with respect to the undisbursed portion, if any, thereof. Upon the execution and delivery hereof by Assignor, Assignee, Administrative Agent (and, if applicable, Borrower), and the payment of the amount specified in Section 2 hereof required to be paid on the date hereof, (1) Assignee shall, as of the commencement of business on the date hereof, succeed to the rights and obligations of a Lender under the Loan Agreement with an Individual Loan Commitment in an amount equal to the Assigned Loan and Commitment and (2) the Individual Loan Commitment of Assignor shall, as of the commencement of business on the date hereof, be reduced correspondingly and Assignor released from its obligations under the Loan Agreement to the extent such obligations have been assumed by Assignee. Assignor represents and warrants that it (x) owns the Assigned Loan and Commitment free and clear of all liens and other encumbrances and (y) is legally authorized to enter into and perform this Agreement. Except as provided in the immediately preceding sentence, the assignment provided for herein shall be without representation or warranty by, or recourse to, Assignor.

SECTION 2. Payments. As consideration for the assignment and sale contemplated in Section 1 hereof, Assignee shall pay to Assignor on the date hereof, in immediately available funds, an amount equal to the outstanding principal amount under the Assigned Loan and Commitment recited in paragraph 4 of the Preliminary Statement above. Each of Assignor and Assignee hereby agrees that if it receives any amount under the Loan Agreement which is for the account of the other party hereto, it shall receive the same for the account of such other party to the extent of such other party's interest therein and shall promptly pay the same to such other party.

SECTION 3. Consents And Execution. This Agreement is conditioned upon the consent of Administrative Agent and, provided there exists no Event of Default, of Borrower pursuant to Section 8.13 of the Loan Agreement. The execution of this Agreement by Borrower (if required) and Administrative Agent is evidence of this consent. Consents not required for certain assignments to entities related to a Lender. Assignee has designated as its Applicable Lending Office, and as its address for notices, the office identified as such below.

SECTION 4. Non-Reliance on Assignor. Assignor makes no representation or warranty in connection with, and shall have no responsibility with respect to, the solvency, financial condition, or statements of Borrower or any other party to any Loan Document, or the validity and enforceability of the obligations of Borrower or any other party to a Loan Document in respect of the Loan Agreement or any other Loan Document. Assignee acknowledges that it has, independently and without reliance on Assignor, and based on such documents and information as it has deemed appropriate, made its own analysis of the collateral for the Loan, credit analysis of Borrower and Guarantor and decision to enter into this Agreement and will continue to be responsible for making its own independent appraisal of the collateral for the Loan and of the business, affairs and financial condition of Borrower and the other parties to the Loan Documents.

SECTION 5. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the Laws of the State of New York (without giving effect to New York's principles of conflicts of law).

SECTION 6. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

SECTION 7. Certain Representations and Agreements by Assignee. Assignee represents that it is legally authorized to enter into and perform this Agreement. In addition, Assignee hereby represents that it is entitled to receive any payments to be made to it under the Loan Agreement or hereunder without the withholding of any tax and agrees to furnish the evidence of such exemption as specified therein to Borrower and Administrative Agent prior to or simultaneously with the execution and delivery of this Agreement and otherwise to comply with the provisions of Section 7.13 of the Loan Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their duly authorized officers as of the date first above written.

[NAME OF ASSIGNOR]

By

 Name:

 Title:

By

 Name:

 Title:

[NAME OF ASSIGNEE]

By

 Name:

 Title:

By

 Name:

 Title:

Assignee's Applicable Lending Office and Address for Notices:

[Assignee]

[Address]

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone: (\_\_\_) \_\_\_\_\_\_\_\_

[NAME OF ADMINISTRATIVE AGENT]

By

 Name:

 Title:

[NAME OF BORROWER]

By

 Name:

 Title:

EXHIBIT C

[INTENTIONALLY OMITTED]

EXHIBIT D

PENDING DISBURSEMENTS CLAUSE

Pending disbursement of the full proceeds of the loan secured by the insured mortgage or deed of trust described herein, this Policy insures only to the extent of the amount actually disbursed plus interest accrued thereon but increases up to the face amount of this Policy as disbursements are made in good faith and without knowledge of any defects in, or encumbrances prior to, the lien of the insured mortgage or deed of trust other than exceptions on Schedule B of this Policy not insured against hereunder.

Title shall be continued down to the date of each disbursement and the Company shall furnish to the Insured a continuation report which shall note (1) the new effective date and amount of this Policy, (2) all assessments, taxes, liens, encumbrances, leases, mortgages, easements and other items including survey variations, encroachments and setback violations then affecting the insured premises which have been filed of record or discovered by the Company since the original date of this Policy regardless of whether they affect the lien of the insured mortgage or deed of trust, (3) which of the aforesaid items have been filed or recorded since the date of the last preceding continuation report, and (4) which of said items are intended to be added as exceptions to the coverage of this Policy as to (a) all amounts secured by the insured mortgage or deed of trust and (b) only amounts secured by the insured mortgage or deed of trust advanced on or after the new effective date of this Policy.

In addition, each continuation search will notify the Insured of any liens which have been discharged by bonding, court deposit or any other means other than full payment.

In the event that the lien of the insured mortgage or deed of trust described herein is insured by more than one insurer, the Company agrees that it shall be bound by the continuation reports of a single company specified as "lead" insurer herein.

EXHIBIT E

NOTE

$\_\_\_\_\_\_\_\_\_\_\_ New York, New York

 \_\_\_\_\_\_\_\_\_\_, 200\_\_

For value received, \_\_\_\_\_\_\_\_\_\_\_ ("Maker") hereby covenants and promises to pay to the order of [NAME OF ADMINISTRATIVE AGENT] or its successors or assigns (collectively, "Administrative Agent” (for the account of the “Lenders” under the Loan Agreement as defined below or their respective successors or assigns for the further account of Lenders’ respective Applicable Lending Offices at the principal office of Administrative Agent located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the principal sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_), or if less, the amount loaned by Lenders to Maker pursuant to the Loan Agreement (as defined below) and actually outstanding, in lawful money of the United States and in immediately available funds, in accordance with the terms set forth in the Loan Agreement. Maker also covenants and promises to pay interest on the unpaid principal balance hereof, for the period such balance is outstanding, in like money, at said office for the account of Lenders (for the further account of Lenders’ respective Applicable Lending Offices), at the time and at a rate per annum as provided in the Loan Agreement. Any amount of principal hereof which is not paid when due, whether at stated maturity, by acceleration, or otherwise, shall bear interest from the date when due until said principal amount is paid in full, payable on demand, at the Default Rate.

This Note is the Note referred to in the Building Loan Agreement dated as of the date hereof (as the same may be amended or supplemented from time to time, the "Loan Agreement") among Maker, as Borrower, the lenders named therein, as Lenders, and Administrative Agent, as Administrative Agent for Lenders. All of the terms, conditions and provisions of the Loan Agreement are hereby incorporated by reference. All capitalized terms used herein and not defined herein shall have the meanings given to them in the Loan Agreement.

This Note is secured by the Mortgage which contains, among other things, provisions for the prepayment of and acceleration of this Note upon the happening of certain stated events. Reference to the Mortgage is hereby made for a description of the "Mortgaged Property" encumbered thereby and the rights of Maker, Administrative Agent and Lenders with respect to such Mortgaged Property.

Maker agrees that it shall be bound by any agreement extending the time or modifying the terms of payment set forth above and in the Loan Agreement, made by or on behalf of Lenders and the owner or owners of the Mortgaged Property, whether with or without notice to Maker, and Maker shall continue liable to pay the amount due hereunder in accordance with the terms set forth herein and in the Loan Agreement, but with interest at a rate no greater than the rate of interest provided in the Loan Agreement, according to the terms of any such agreement of extension or modification.

Should the indebtedness represented by this Note or any part thereof be collected at law or in equity, or in bankruptcy, receivership or any other court proceeding (whether at the trial or appellate level), or should this Note be placed in the hands of attorneys for collection upon default, Maker agrees to pay, in addition to the principal, interest and other sums due and payable hereon, all costs of collecting or attempting to collect this Note, including reasonable attorneys' fees and expenses.

All parties to this Note, whether principal, surety, guarantor or endorser, hereby waive presentment for payment, demand, protest, notice of protest and notice of dishonor.

This Note shall be governed by, and construed and enforced in accordance with, the Laws of the State of New York (without giving effect to New York's principles of conflicts of law), provided that, as to the maximum lawful rate of interest which may be charged or collected, if the Laws applicable to any Lender permit it to charge or collect a higher rate than the Laws of the State of New York, then such Law applicable to such Lender shall apply to such Lender under this Note.

Anything herein to the contrary notwithstanding, the obligations of Maker under this Note shall be subject to the limitation that payments of interest shall not be required to the extent that receipt of any such payment by any Lender would be contrary to provisions of Law applicable to such Lender limiting the maximum rate of interest that may be charged or collected by such Lender.

This Note is subject to the provisions of Section 3.17 of the Mortgage.

IN WITNESS WHEREOF, Maker has executed and delivered this Note as of the date first above written.

EXHIBIT F

AUTHORIZATION LETTER

 \_\_\_\_\_\_\_\_\_\_\_, 200\_\_

TO:

Re: Building Loan Agreement and Loan Agreement, each dated as of the date hereof, and each among us, as Borrower, \_\_\_\_\_\_\_\_\_\_\_ Bank and certain other lenders, as Lenders, and \_\_\_\_\_\_\_\_\_\_\_\_\_ Bank, as Administrative Agent (collectively, the "Loan Agreement")

Dear Sir/Madam:

In connection with the Loan Agreement, we hereby designate any of the following persons to give to you instructions, including notices required pursuant to the Loan Agreement, orally, by telephone or teleprocess, or in writing:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Instructions may be honored on the oral, telephonic, teleprocess or written instructions of anyone purporting to be any one of the above designated persons even if the instructions are for the benefit of the person delivering them. Promptly upon request, we will furnish you with written confirmation of each such instruction signed by any person designated above (including any telecopy which appears to bear the signature of any person designated above) on the same day that the instruction is provided to you, but your responsibility with respect to any instruction shall not be affected by your failure to receive such confirmation or by its contents.

Without limiting the foregoing, we hereby unconditionally authorize any one of the above-designated persons to execute and submit "Requisitions" or requests for advances under the Loan Agreement with the identical force and effect in all respects as if executed and submitted by us.

You and "Lenders" (as such term is defined in the Loan Agreement) shall be fully protected in, and shall incur no liability to us for, acting upon any instructions which you in good faith believe to have been given by any person designated above, and in no event shall you or Lenders be liable for special, consequential or punitive damages. In addition, we agree to hold you and Lenders and your and their respective agents harmless from any and all liability, loss and expense arising directly or indirectly out of instructions that we provide to you in connection with the Loan Agreement except for liability, loss or expense occasioned by your gross negligence or willful misconduct.

Upon notice to us, you may, at your option, refuse to execute any instruction, or part thereof, without incurring any responsibility for any loss, liability or expense arising out of such refusal if you in good faith believe that the person delivering the instruction is not one of the persons designated above or if the instruction is not accompanied by an authentication method that we have agreed to in writing.

We will promptly notify you in writing of any change in the persons designated above and, until you have actually received such written notice and have had a reasonable opportunity to act upon it, you are authorized to act upon instructions, even though the person delivering them may no longer be authorized.

Very truly yours,

[BORROWER]

By

 Name:

 Title:

EXHIBIT G

REQUIRED CONTENTS OF BORROWER'S COUNSEL OPINION

1. The Loan Documents have each been duly authorized, executed and delivered by the parties thereto (other than Administrative Agent and Lenders) and are valid and binding instruments enforceable against such parties in accordance with their respective terms (including, without limitation, any governing law designations made therein), subject, however, to the qualifications that (i) some of the rights and remedies set forth in the Note and Mortgage may be limited by bankruptcy, insolvency, reorganization and other laws of general application to the enforcement of creditors' rights and (ii) certain remedies and waivers contained in the Mortgage may be limited by applicable law, none of which qualifications will materially interfere with the practical realization of the benefits and security provided by said documents except for the economic consequences of any procedural delay which may result therefrom.
2. If Borrower, the mortgagor under the Mortgage (if different from Borrower), Guarantor or any general partner or member of any of them is a corporation, partnership, venture, limited liability company or trust, each such entity is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, is qualified to do business (or such opinion shall specifically state that such qualification is not required) and is in good standing in the State of New York, and has full power and authority to consummate the transactions contemplated by the Loan Documents and to execute, deliver and perform all Loan Documents to which it is a party.
3. There are no actions, suits or proceedings pending or threatened against or affecting Borrower, Guarantor, the Premises, the validity or enforceability of the Mortgage or the priority of the lien thereof at law, in equity or before or by any Governmental Authorities except actions, suits or proceedings which have been disclosed to Administrative Agent and Lenders in writing and which are fully covered by insurance or would, if adversely determined, not substantially impair the ability of Borrower or Guarantor to pay when due any amounts which may become payable under the Note or Guaranty or to otherwise pay and perform their respective obligations in connection with the Loan; neither Borrower nor Guarantor is in default with respect to any order, writ, injunction, decree or demand of any court or Governmental Authorities.
4. The consummation of the transactions contemplated by and the performance of the Loan Documents have not resulted and 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, partnership agreement or other instrument to which Borrower or Guarantor is a party or by which either of them may be bound or affected.
5. There exist no violations of any laws, statutes, ordinances, rules, orders, regulations or requirements of any Governmental Authorities with respect to the Improvements and that the anticipated use thereof complies with all applicable zoning and other laws, etc. and with all restrictions, covenants, leases and easements affecting the Premises.
6. The necessary rights-of-way for all roads necessary for the full utilization of the Improvements for their intended purposes have been either acquired by Borrower or have been dedicated to public use and accepted by appropriate Governmental Authorities.
7. The Premises are not part of a larger tract of land owned by Borrower, its affiliates or Guarantor, or otherwise considered as part of one zoning or tax lot, or, if they are, any authorization or variance required for the subdivision of such larger tract which a sale of the Premises would entail has been obtained from all appropriate Governmental Authorities so that the Premises and Improvements constitute one zoning or tax lot (including parking and utility facilities and street access, if relevant) capable of being (a) conveyed as such and (b) developed in the manner contemplated by the Loan Documents.
8. To such other effects as Administrative Agent or Lenders' Counsel may reasonably require.

EXHIBIT H

Price Schedule

 Residential Units Sales Price

EXHIBIT I

Condominium Sales Report

Through monthly period ending \_\_\_\_\_\_\_\_\_\_\_\_, 200\_\_

(to be submitted to Administrative Agent monthly and must list all Units in
the condominium which are under contract or have closed)

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  | Method of Payment |  |  |
| Unit No. and Type | Date ContractSigned | Sales Price | Down Payment/Escrow Deposit | ClosingDate | Cash | Mortgage | Mortgagee | Purchaser |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |

True copies of the Approved Contracts for the Units identified above and not previously delivered to Administrative Agent are enclosed herewith. All down payments/escrow deposits are being held by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in Account No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and the current balance thereof is $\_\_\_\_\_\_\_\_\_\_\_\_.

 CERTIFIED CORRECT

 [BORROWER]

 By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:

 Title:

EXHIBIT J

Unit Construction/Sales Report
(to be submitted to Lender monthly and must list all Units in the condominium)

Date: \_\_\_\_\_\_\_\_\_\_\_\_, 200\_\_

|  |  |  |
| --- | --- | --- |
|  | Construction Status | Sales Status |
| Unit No./Unit Type | Not Started | Under Construction | Completed | Not Under Contract | Under Contract | Closed |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  Project Totals: |  |  |  |  |  |  |

 CERTIFIED CORRECT

 [BORROWER]

 By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:

 Title:

EXHIBIT K

ASSIGNMENT OF DECLARANT'S RIGHTS

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, having an office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Assignor"), for Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, assign, transfer and set over unto \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ having an office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Administrative Agent"), all of Assignor's right and privileges (the "Declarant's Rights") arising under (i) the Declaration (as defined below), and (ii) the by-laws and articles of incorporation relating to the condominium (the "Condominium") created by the Declaration (said by-laws and articles of incorporation, together with the Declaration, collectively called the "Condominium Documents").

So long as no Event of Default shall exist under the Mortgage (as defined below), Assignor may exercise the Developer's Rights and Administrative Agent may not exercise Developer's Rights, except that Assignor may not (i) transfer or encumber any of the Developer's Rights, except as permitted in the Mortgage, (ii) cause or allow any of the Condominium Documents that require the consent or approval of declarant to amend or which Assignor has the right to amend independently to be modified without Administrative Agent's prior written consent or (iii) allow any of the officers or managers of the association of the Condominium which Assignor has appointed to resign or be removed from office, unless Assignor shall have caused to be delivered to Administrative Agent a duly executed letter of resignation from each such officer or manager being added to said association in the form attached as EXHIBITS \_\_\_‑1 and \_\_\_‑2 to the Loan Agreement dated \_\_\_\_\_\_\_\_\_\_, 200\_\_, among Administrative Agent, certain lenders and Assignor.

Upon the full payment and performance of all obligations secured by the Mortgage, the Developer's Rights shall automatically be reassigned to Assignor by Administrative Agent and this Assignment shall terminate.

For the purposes of this Assignment, "Declaration" shall mean the Declaration of Condominium for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a condominium, dated \_\_\_\_\_\_\_\_\_\_, 200\_\_, and recorded on \_\_\_\_\_\_\_\_\_\_, 200\_\_, in the Public Records of \_\_\_\_\_\_\_\_\_\_ County, \_\_\_\_\_\_\_\_\_\_ in Book \_\_\_\_\_, page \_\_\_\_\_, together with all amendments thereto, if any; "Mortgage" shall mean the mortgage or deed of trust dated \_\_\_\_\_\_\_\_\_\_, 200\_\_ from Assignor to Administrative Agent which secures a $\_\_\_\_\_\_\_\_\_\_ loan and which was recorded on \_\_\_\_\_\_\_\_\_\_, 200\_\_ in the aforesaid Public Records in Book \_\_\_\_\_, page \_\_\_\_\_.

This Assignment shall be construed and enforced in accordance with the laws of the State of New York.

The rights and privileges of Administrative Agent hereunder shall inure to the benefit of its successors and assigns.

IN WITNESS WHEREOF, Assignor and Administrative Agent have each duly executed and delivered this Assignment this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 200\_\_.

Attest: [ASSIGNOR]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By

Name: Name:

Title: Title:

 [ADMINISTRATIVE AGENT]

 By

 Name:

 Title:

 By

 Name:

 Title:

[Acknowledgments]

EXHIBIT L

\_\_\_\_\_\_\_\_\_\_\_ CONDOMINIUM
(Resignation of Managers)

 \_\_\_\_\_\_\_\_\_\_\_\_\_, 200\_\_

TO:

Attention: Real Estate Finance

Re: \_\_\_\_\_\_\_\_\_\_\_\_Condominium

Gentlemen:

The undersigned \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, being all of the managers of the Board of Managers of the Owner's Association of the referenced Condominium which were appointed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereby tender their respective resignations as managers thereof. Said resignations may not be rescinded or revoked by any of the undersigned so long as you are the holder of any mortgage or deed of trust encumbering any of the unsold condominium units of said Condominium. Said resignations shall be effective upon your acceptance thereof, without notice to the undersigned, at any time during the existence of an Event of Default under any such mortgage or deed of trust.

Very truly yours,

EXHIBIT M

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ CONDOMINIUM
(Resignation of Officers)

 \_\_\_\_\_\_\_\_\_\_\_\_, 200\_\_

TO:

Attention: Real Estate Finance

Re: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Condominium

Gentlemen:

The undersigned \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, being all of the officers of the Owner's Association of the referenced Condominium which were appointed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereby tender their respective resignations as officers hereof. Said resignations may not be rescinded or revoked by any of the undersigned so long as you are the holder of any mortgage or deed of trust encumbering any of the unsold condominium units of said Condominium. Said resignations shall be effective upon your acceptance thereof, without notice to the undersigned, at any time during the existence of an Event of Default under any such mortgage or deed of trust.

Very truly yours,

EXHIBIT N

AGREEMENT REGARDING MANAGEMENT AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_\_\_, 200\_\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_ (the "Manager") and \_\_\_\_\_\_\_\_\_\_\_\_\_\_ OWNERS ASSOCIATION (the "Association").

WHEREAS, the Association has been formed for the purpose of carrying out certain functions and duties relating to \_\_\_\_\_\_\_\_\_\_\_\_\_ [**Development**] [**Condominium**] (the "Development") located in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, which functions and duties include, among others, the maintenance and administration of the common properties of the Development, the administration and enforcement of the covenants and restrictions affecting the Development and the collection of charges assessed to the members of the Association; and

WHEREAS, the Manager has agreed with the Association to provide management services to perform certain of said functions and duties for the Development in accordance with an agreement dated \_\_\_\_\_\_\_\_\_\_, 200\_\_ (the "Management Agreement"); and

WHEREAS, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Lender") has made a loan (the "Loan") to \_\_\_\_\_\_\_\_\_\_\_ LLC ("Borrower") to finance the Development in accordance with a [**Building**] Loan Agreement dated as of \_\_\_\_\_\_\_\_\_\_, 200\_\_, and evidenced and secured, respectively, by one or more Notes and Mortgages [**Deeds of Trust**] to \_\_\_\_\_\_\_\_\_ Bank, as administrative agent for Lender(s) (the "Administrative Agent"), of even date therewith; and

WHEREAS, as conditions to the Loan, to Lender's subordinating its Mortgage(s) [**Deed(s) of Trust**] to the Declaration or Master Deed for the Development and to its approval of the Management Agreement, Lender has required the execution and delivery of this Agreement;

NOW, THEREFORE, in consideration of the foregoing, and as additional security for the Loan, the Manager and the Association hereby agree with each other and for Lender's benefit as follows:

Anything to the contrary contained in the Management Agreement notwithstanding so long as Borrower controls the Board of Managers of the Association and for so long as the Loan is outstanding:

1. The Management Agreement shall not, without Lender's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, be modified in any material respect, assigned or terminated;
2. Following the occurrence of an Event of Default under the above-described Mortgage(s) (as any or all of the same may be amended or supplemented from time to time) and during its continuance, or at any time following a default beyond any applicable cure period by the Association under the Management Agreement, the Manager shall, at Administrative Agent's request, continue performance on Administrative Agent's behalf under the Management Agreement provided the Manager is reimbursed in accordance with the terms of the Management Agreement for all services rendered on Administrative Agent's behalf; and
3. Any time following the occurrence of an Event of Default under the above-described Mortgage(s) (as any or all of the same may be amended or supplemented from time to time) and during its continuance, Administrative Agent shall have the right, at its option and without the need for any further action by the parties hereto, to terminate the Management Agreement on three (3) days' notice to the Association and the Manager sent by registered or certified mail, postage prepaid, to their respective addresses set forth below. In the event of such termination, the Manager agrees to turn over promptly to Administrative Agent or its designee all documents and files relating to the Development.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly authorized, executed and delivered the day and year first above written.

[ASSOCIATION] [MANAGER]

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name: Name:

 Title: Title:

Address of Association: Address of Manager:

[**Instrument must be in recordable form.**]