

CONSTRUCTION LOAN AGREEMENT

OWNER:

LENDER: _____

PROPERTY ADDRESS: NY

LOAN AMOUNT: _____

CONSTRUCTION FUNDS: _____

WHEREAS, Owner has borrowed, and acknowledged to have received, the above Loan Amount from Lender upon the representation and promise that the said sum will be used exclusively in improving properties known and as security therefore has simultaneously with the execution of this Agreement executed the Note in said Loan Amount to Lender and a Deed of Trust to Lender covering property more particularly described in said Deed of Trust, of even date herewith and recorded among the Land Records where the property is located.

NOW THEREFORE, THIS AGREEMENT WITNESSETH, that in consideration of the premises and the sum of One Dollar (\$1.00) each to the other paid, receipt whereof is hereby acknowledged, and the mutual covenants and agreements herein contained each of the parties hereto does covenant and agree with the other as follows:

Section 1 – Construction Funds

1.1 – That Owner does simultaneously with the executive of this Agreement instruct Lender, upon the terms and conditions hereinafter particularly set forth, to withhold the above Construction Funds amount without power of revocation and irrevocably constitutes and appoints Lender, to disburse the same upon the terms and conditions hereinafter set forth.

1.2 – That the aforesaid Construction Funds shall not be assignable in whole or in part by Owner or become subject to attachment or other proceeding of any court upon any action by or against Owner or anyone claiming under or through him, and that the said Construction Funds shall remain and be considered the property of the said Lender for the purposes herein recited and be held and disbursed solely and only in accordance with the provisions of this Agreement. Nothing herein contained shall be taken or considered as impairing, modifying or affecting the obligations of Owner under the Note and Deed of Trust hereinbefore referred to.

1.3 – Lender is to disburse the Construction Funds in accordance with the terms of this Agreement. Pending disbursement, said Lender in its sole discretion may hold said funds in any bank or trust company. Lender shall not be required to maintain a separate bank account to hold the Construction Funds. Lender may maintain the Construction Funds in any account Lender desires, including but not limited to Lender's General Operating Account, or any other account, including an available line of credit. If Lender maintains the Construction Funds on one or several of Lender's available lines of credit, Lender shall not be required to draw down upon the line of credit until Lender is prepared to disburse funds in accordance with the terms of this Agreement and disburse the Construction Funds to Owner.

Section 2 – Construction and Inspections

2.1 – Owner shall erect the improvements upon the lot described in said Deed of Trust in accordance with the agreements, plans and specifications submitted by Owner and approved by Lender which plans and specifications are now in the possession of Lender, and the erection and construction of, and the payments for, said improvement shall be in strict compliance with the plans and specifications unless changes therein are authorized in writing by Lender.

2.2 – While Lender has approved the building plans and specifications, and while Lender, its agents, servants and employees contemplate making periodic inspections of the subject site while under construction, it is understood by all parties hereto that Lender, its employees, its agents, servants and employees, shall have no responsibility to Owner or to anyone else with respect to the condition of the soil and/or subsoil conditions as they might affect the construction contemplated, nor shall Lender, its agents, servants and employees be in any manner liable or responsible to Owner, prospective tenants or others with respect to the manner of construction, materials used in construction or with any other question with respect to constructions, and it is a condition precedent to the granting of the subject Deed of Trust that Owner hereby indemnifies and holds harmless

Lender, its agents, servants and employees from any liability as to the soil or subsoil conditions, materials used in construction and the method and manner of construction.

2.3 – At any time during the course of construction, either prior or subsequent to any advances hereunder, should any question develop as to the soundness or worthiness of the construction at this point, Lender, in its sole discretion, and at the expense of Owner, shall have the right to employ, and obtain the opinion of, an inspector, a qualified engineer or architect, as to the soundness or worthiness of construction up to the point where the question developed. The fees charged by said inspections may be paid from the Construction Funds. Lender shall then have the right, in its absolute discretion, to require such remedial measures as it deems necessary and shall, in its absolute discretion, have the right to withhold any further advances under this Agreement until such remedial measures are completed to the satisfaction of Lender.

2.4 – That Owner will apply for, obtain and exhibit to Lender all necessary approved permits or other papers required by the proper authorities. All construction work shall be performed by licenses contractors.

2.5 – Owner shall not begin any work or construction until after forty-eight (48) hours have elapsed from the time of the recording of the Deed of Trust securing the Note, and thereafter Owner shall begin construction promptly and proceed with the same without interruption or delay, and shall complete the improvements, provide proper drainage, do necessary concreting, grading and sodding in order to make a complete and finished job of the property and suitable for habitation, all in accordance with the aforesaid plans and specifications within six (6) months from the date hereof.

2.6 – As Lender has expressed the desire that he may not have the benefits of the knowledge of others who are trained in determining when each stage of construction, as enumerated in the schedule of advancements hereinafter set forth, has been completed, it is agreed that each and every of said advances shall be subject to inspection and approval of an inspector appointed by Lender. Said inspector may be Lender or a third-party inspector chosen by Lender. Said inspector may charge a reasonable fee for inspection. Owner authorizes the inspector's fee to be paid out of any remaining Construction Funds. In regard to inspections so made, no liability is assumed by Lender and/or the inspector that construction will be in accordance with plans and specifications as to the quality of materials and workmanship.

2.7 – Following a Satisfactory (Satisfactory shall be determined in Lender's sole discretion) inspection by an inspector appointed by Lender or his successor, of the construction, Lender shall pay to Owner the installments due in accordance with the agreed Draw Schedule.

2.8 – Lender shall not make payment of any installment until and unless the work as provided to be completed under each installment has been fully completed in strict compliance with all the plans and specifications and/or any properly authorized changes therein or amendments thereto, unless and until the construction has been examined and approved by an inspector appointed by Lender or his successor or successors, who shall also certify to Lender and the premises the date of such inspections and approval have been erected in accordance with the plans and specifications hereinbefore mentioned. The exact work necessary to be done before Lender shall be required to make disbursement of any installment includes all work that would generally be necessary in order to complete the work to the stage particularly mentioned under any installment.

2.9 – Lender's determination as to whether or not a particular installment is due and payable shall be final, and any failure of Owner to abide by such determination shall be deemed a default hereunder and Lender shall forthwith be entitled to exercise all of the rights and remedies set forth and contained in the Default Provisions Section hereunder.

Section 3 – Default Provisions

3.1 – It is further understood and agreed between the parties hereto that if Owner stops working on any of the aforesaid improvements for a period of fifteen (15) consecutive days for any cause other than weather conditions, or should Owner fail to have said improvements fully completed within six (6) months from the date hereof; or upon the failure by Owner to comply strictly with any of the other provisions of this Agreement; or should the equity of redemption in said property become vested in any other person, company or corporation that Owner, either by act of Owner or by law; or should Owner be declared a bankrupt or should Owner file a petition under the bankruptcy laws; or should a Receiver be appointed for Owner's assets; or should Owner make a general assignment or the benefit of its creditors; or should any attempt be made to lay attachment or attachments in the hands of said Lender; or should any claim or suit be filed or threatened for a mechanic's lien for labor or material in reference to the subject property; or should a lien junior to said Deed of Trust be filed against said property; or should Owner be in default of any of the covenants, conditions and provisions of the Deed of Trust and/or Promissory Note secured thereby, including, but not limited to, the covenant to repay the secured debt, then in any of said events Lender shall, in its sole discretion, have the authority to withhold any advance due hereunder and/or to use the balance of said sum in its hands for the cost of completing said improvements in accordance with the aforesaid plans and specifications, or to pay the balance then in its hands unto Lender, beneficiary on account of indebtedness under its Note.

3.2 – Should any default occur in any of the covenants, conditions and agreements of the Deed of Trust from said Owner to Lender named in said recorded Deed of Trust and said Lender should foreclose said Deed of Trust and make a sale of property therein described, and in the event of any deficiency of the amount realized from the sale of said property and the amount due on said Deed of Trust, including costs of foreclosure, said deficiency shall be made up and paid to Lender under the Deed of Trust, out of the unexpended balance of Construction Funds.

3.3 – No payments are to be made to Owner as set forth above, except at the option of Lender under the aforesaid schedule, if at the time the same become due, he has/they have actual or constructive notice, of tax liens or any unpaid claims for material or labor furnished entering into the erection of said proposed improvements upon said lot or lots and Lender may apply such installments in whole or in part to the discharge of said claim or claims or he/they shall at its sole discretion hold such installment or installments pending the negotiation of Owner and all claimants for the purpose of seeing the proper discharge and release of any and all claims for labor and material applicable to the said proposed improvements. Lender, at Lender’s sole discretion, shall have sold authority in disposing of all tax, material and mechanics’ liens and all other claims so that Owner will be placed in a position to continue with the erection of said improvements upon said lot in full and to the same extent as though no liens had hereto before been filed against said Owner of property. Lender, after the compromise has been affected, shall in its sole discretion call for such other or further security to protect Lender, under the recorded Deed of Trust or any other holder of the Note in due course. In the event Owner and material and mechanics’ liens holders cannot come to an agreement of compromised within thirty (30) days from the time said Lender receives notice of said liens, then Lender and/or Trustees under the recorded Deed of Trust may foreclose said Deed of Trust as provided in this Default Provisions Section.

3.4 – If Owner shall breach any of its covenants herein and Lender do any of the things mentioned in this Default Provisions Section, Lender shall be entitled to compensation in the amount of five percent (5%) of the original Construction Funds amount.

Section 4 – Miscellaneous Provisions

4.1 – The covenants herein contained shall bind, and the benefits and advantages, shall inure to the respective heirs, personal representatives, executive, administrators, successors and assigns of the parties hereto. Whenever used the singular number shall include the plural, the plural shall include the singular and the uses of any general shall be applicable to all genders.

4.2 – Lender shall not be held liable for any loss or damage whatsoever. Owner agrees to hold harmless and indemnify Lender, its servants, employees and agents from any loss or damage whatsoever.

4.3 – That no waived by Lender of any breach of any provision hereof at any time shall operate as a waiver of the provisions hereof, but the same shall remain in full force and effect.

4.4 – That Lender is hereby authorized to record this Agreement whenever and wherever he/they see fit, and Lender shall be reimbursed by Owner for any expenses incurred in so recording.

4.5 – Wherever in this Agreement the word “Lender” is used, same shall include and apply to Lender or either of its successors and/or assigns.

Notwithstanding any other provisions elsewhere in this Construction Loan Agreement, Note, Deed of Trust, Security Agreements or any other loan documents, Borrower shall pay interest on the entire loan balance including interest on those Construction Funds yet to be disbursed to Borrower.

Date:

Date: