

«f80»

«f81»

«f82», «f83»

CONSTRUCTION LOAN AGREEMENT

Loan #«f2»

This agreement is executed by the undersigned Borrower, hereinafter called "the Borrower" for the purpose of obtaining a construction loan through «f80», or assignee, hereinafter called "the Lender" which loan is to be evidenced by a Note of the Borrower for \$«f20» dated «f28», hereinafter called "the note", in favor of said Lender and secured by a First Deed of Trust, hereinafter called "the Deed of Trust, on real property in the County of «f63», State of California and described in said Deed of Trust, and upon which it is proposed that there shall be constructed certain improvements.

The proceeds of this loan, upon recordation, together with the sum of \$ to be deposited by or on behalf of the Borrower are to be known as "Funds on Deposit" and are to be paid out, and are to be used for the purposes set out herein. Said funds on deposit shall be placed in a separate account, hereinafter called "Construction Account" at a Federally insured depository, hereinafter called "Depository" of Lender's choice and shall be a non-interest bearing account. Subject to the provisions of this agreement, the Borrower irrevocably assigns to the Lender, as security for the obligations secured by said Deed of Trust, and the due performance of this agreement by the Borrower and for any other joint and/or several obligation or obligations of the Borrower to the Lender, all of the right title and interest of the Borrower in and to the Construction Account, and all monies to be placed therein, specifically including amounts that may be deposited in said account from time to time in the future, either by the Borrower or by the Lender including any interest which may have accrued on said funds so deposited. The Borrower acknowledges that he has no right to the monies in said Construction Account other than to have the same disbursed by the depository at the decision of the Lender and only upon the Lender's instructions in accordance with this agreement, which disbursements the Lender, upon its acceptance of this agreement, agrees to authorize for the purpose and upon the conditions set out herein. The Borrower agrees that, except as hereinabove mentioned, any assignment or transfer, voluntary or involuntary, or this Agreement or any right hereunder, shall not be binding upon nor in any way effect the Lender without the Lender's written consent, and that the Lender may instruct the Depository to pay out the monies in said construction account, as provided herein, notwithstanding any such agreement to transfer.

Each of the Borrowers, jointly and severally agree as follows:

1. Gross loan proceeds in the amount of \$ shall be disbursed pursuant to that Mortgage Loan Disclosure Statement of even date. "Construction Proceeds in the approximate amount of \$ shall be deposited into the "Construction Account" from the gross loan proceeds. All parties agree that the Mortgage Loan Disclosure Statement is an estimate only and that the final amounts may vary as per the provisions of the escrow instructions executed in conjunction with this transaction. "Construction Account" in the approximate amount of \$ shall be disbursed per the plan checked below:

— **Voucher Payment Plan:** In accordance with the breakdown furnished by the Borrower, funds shall be disbursed to contractors, subcontractors and material suppliers for work performed and materials used or installed on the real property and upon written order of the Borrower on forms furnished by the Lender.

— **Other Payment Plan:** To in accordance with the payment plan attached hereto as Exhibit "A"

2. **Disbursement of Funds.** No loan funds will be disbursed until (1) a valid building permit has been issued covering all of the improvements which are the subject of the loan, (2) receipt of such hazard insurance as may be required by the Lender, and (3) receipt of a policy of title insurance satisfactory to the Lender showing the Deed of Trust to be a first lien or charge upon the property, excepting only such items as shall have been approved in writing by the Lender.

All disbursements from the loan in process account shall be subject to progress inspection and/or approval of the Lender. The Borrower agrees that all funds disbursed to him by the Lender hereunder are received in trust for the purpose of paying in full contractors, material suppliers and laborers (other than the Borrower) then and theretofore engaged in said construction, and that the Borrower shall not have any beneficial interest in said funds unless and until said purpose has been fulfilled. Under any payment plan the Lender may, at its option, make disbursement by joint checks naming such persons or companies as it deems advisable. Any other change in the payment plan described above shall be effective only upon a written agreement of the Lender and the Borrower.

The following are hereby designated as person authorized to sign written loan disbursement orders in accordance with the terms of this Agreement, and the Owner, with the consent of the Lender, shall have the sole right to revoke such designation, and substitute any other person as the person authorized to sign such orders: _____

3. **Plans and Specifications.** The Borrower agrees to furnish to the Lender such construction plans, specifications, cost breakdowns, contracts, estimates and bids of contractors and subcontractors, including all relevant approvals thereof by the appropriate public and government authorities, as the Lender, may require for the purpose of appraising the improvements and making payment under any payment plan used. **Borrower hereby acknowledges that he has sole responsibility for the preparation and final approval of all plans, specifications, cost breakdowns, contracts, estimates and bids hereinabove mentioned.**

4. **Construction; Time for Completion.** Borrower shall diligently proceed with construction and completion of the improvements in accordance with the above-mentioned plans and specifications. The improvements shall be completed on or before .

5. **Borrower Responsibility to Select and Approve Contractors.** **Borrower hereby acknowledges that the Lender has not participated and has no duty to participate in the process of selecting contractors or subcontractors to complete the work of improvement. Borrower further acknowledges that he has the sole responsibility for the investigation and approval of the qualifications of said contractors and subcontractors, including, but not limited to, their expertise, quality of workmanship, financial stability and compliance with relevant licensing requirements.**

6. **No Reliance Upon Expertise of the Lender.** **The Borrower further acknowledges that he is not relying on any presumed expertise of the Lender in the making of this loan either as to the stability of the site or building, as to the soundness of the structure, its value or fitness for the use intended, or in any other manner whatsoever.**

7. **Protection Against Lien Claims.** The Borrower agrees, if and when required by the Lender, as a condition precedent to the payment of any of the monies in the loan in process account, to furnish receipted bills and releases of the lien and stop notice rights covering work done and/or materials furnished for the said improvements showing the payment of all claims for labor and materials used to date. However, nothing herein contained shall require Borrower to pay any claims for labor, materials, or services which Borrower in good faith disputes and which Borrower, at its own expense is currently and diligently contesting; provided, however, that Borrower shall:

(a) Within ten (10) days after the filing of any claim of lien that is disputed or contested by Borrower, record, in the Office of the Recorder of the County where the property is located, a surety bond pursuant to the California Code of Civil Procedure sufficient to release said claim of lien;

(b) Within ten (10) days after the receipt by the Lender of any stop notice to withhold funds applicable to the loan in process account that is disputed or contested by Borrower, furnish a surety bond pursuant to the California Code of Civil Procedure sufficient to release said stop notice.

8. **Minimum Specifications.** The Borrower agrees to complete the proposed improvements in accordance with the plans, details and specifications furnished to the Lender pursuant to Paragraph 3 of this Agreement, including any minimum specifications prescribed by the Lender. If there is any difference between any such minimum specifications and any plans, details or specifications furnished to the Lender as hereinabove mentioned, then the requirements of whichever thereof are the higher in the opinion of the Lender shall be met in constructing said improvements.

9. **Changes in Plans and Specifications.** No change in plans, details or specifications shall be made after the same have been furnished to the Lender pursuant to Paragraph 3 of this Agreement without first obtaining the written consent of the Lender to such changes. All contracts led by Borrower in connection with said construction shall contain this provision.

10. **Payment and Performance Bonds.** The Lender may, at its option either before or after the commencement of the work of improvement, require the Borrower to procure and deliver to the Lender a payment and/or performance bond satisfactory to the Lender for the work to be performed by the contractor and any subcontractors. In any such bond, the Lender shall be named as an additional obligee.

11. **Commencement of Improvements.** No improvements of any kind shall be commenced on the real property until authorized by the title company, including, but not limited to, the placing of materials upon said real property.

12. **Signs.** Borrower agrees that the Lender may place a sign or signs appropriate to the construction project on the property evidencing that construction financing is being made by the Lender.

13. **Interest.** Notwithstanding that the proceeds of said loan are placed in said assigned account and are to be disbursed therefrom in installments, interest is to be paid in accordance with the terms of the Note executed in connection herewith.

14. **Foundation.** The Borrower agrees to furnish the Lender, if required by it, immediately upon the completion of foundation forms, a survey or other evidence satisfactory to the Lender, including a title insurance endorsement, showing that said foundation is or will be located entirely within the property lines, and does not encroach upon any easement, breach or violate any covenants, conditions or restrictions of record, or any building or zoning ordinance.

15. **Purchase of Materials Under Conditional Sales Agreement.** No materials, equipment, fixtures, or any other part of said improvements shall be purchased or installed under conditional sales agreements or other arrangements wherein the right is reserved to remove or repossess any such items, or to consider them personal property.

16. **Deposit of Additional Funds by Borrower.** If and whenever the Lender shall determine and notify the Borrower that the amount of monies remaining in the loan in process account is less than the amount required to fully complete and pay for said improvements, and the Lender demands that the Borrower deposit with the Lender in said account an amount equal to such deficiency as estimated by the Lender, then the Borrower shall comply with such demand within ten (10) days from the date thereof. The judgment of the Lender as to the sum necessary to complete said improvements shall be final and conclusive in this respect. However, it is understood and agreed between the parties hereto that the Lender shall have no obligation to determine and does not make any warranty as to the sufficiency of the loan proceeds to complete and pay to the work of improvement.

17. **Right to Enter Property; Discovery of Unsatisfactory Work.** The Lender or its agent shall have the right at all times to enter upon said premises during the period of construction, and if the work is not in conformance with said plans, details or specifications, or is not otherwise satisfactory to said Lender, it shall have the right but not the obligation to stop said work, and/or order its replacement whether or not said unsatisfactory work has theretofore been incorporated in said improvements, and to withhold all disbursements hereunder until said work is satisfactory to it.

18. **Inspection.** It is expressly understood and agreed by the Borrower that the Lender is under no obligation to construct or supervise construction of said improvements and that inspection of said improvements and that inspection of the construction by the Lender or its agents is for the sole benefit of the Lender. In addition, it is expressly understood and agreed by the Borrower that the Lender shall have no duty to make any inspection of the work of improvement. Any such inspection is not to be construed as a representation that there will be or has been compliance on the part of the builder with the plans, details and specifications, or that the construction will be or is free from faulty material or workmanship. It is further agreed and understood by the Borrower that the Lender shall have no duty to notify the Borrower of any defects in workmanship or materials or changes in the work of improvement from the plans, details and specifications which the Lender or its agents may notice in any inspection.

The Borrower shall have the duty to inspect the work of improvement and inform the Lender of any defective or incomplete work, substituted materials or other changes in construction from the plans, details and specifications hereinabove mentioned. If the Borrower is not experienced in construction methods, it is suggested that he seek competent assistance in making such inspections and protecting his interests.

19. **Events of Default.** The following events shall constitute events of default hereunder:

(a) Failure of the Borrower to make any deposit require pursuant to paragraph 16 of this Agreement within ten (10) days after written demand therefor.

(b) Substantial deviations in the work of construction from the plans and specifications without the prior approval of the Lender or the appearance of defective workmanship or materials, which said deviations or defect are not corrected within thirty (30) days after written notice thereof.

(c) Cessation of the work of construction prior to the completion of the improvements for a continuous period of fifteen (15) days or more.

(d) The filing of any claim of lien against the property, the improvements or any part thereof, or the service of any stop notice to withhold funds applicable to the loan in process account, and the continued maintenance of said claim of lien or stop notice for a period of ten (10) days without discharge or satisfaction thereof or provision therefor in accordance with Paragraph 7 of this Agreement.

(e) The breach of any covenant, warranty, promise or representation contained in this Agreement and the continuance of such breach for a period of thirty (30) days after written notice thereof to the Borrower; provided, however, that if a different period or notice requirement is specified for any particular breach under any other provision of this Agreement, the specific provisions shall control.

(f) A decree or order of a court having jurisdiction shall have been entered adjudging Borrower to be bankrupt or insolvent or approving as properly filed a petition seeking reorganization of Borrower under the Federal Bankruptcy Law or any other applicable law or statute of the United States, or any state, or appointing a receiver or trustee or assignee in bankruptcy or insolvency of Borrower for its property, or directing the winding up or liquidation of Borrower, and such decree or order shall have been continuing, undischarged or unstayed for a period of thirty (30) days.

(g) The commencement of any work or the delivery of any materials upon or near the property prior to the recordation of the Deed of Trust.

(h) The occurrence of a default under the Note and/or Deed of Trust.

(i) The failure to commence construction within thirty (30) days from the date of this Agreement.

(j) The failure to complete construction within the time provided for in Paragraph 4 of this Agreement.

20. **Rights of the Lender Upon Default.** Upon the occurrence of an event of default pursuant to Paragraph 19 of this Agreement:
(a) The Lender shall have the right but not the obligation to accelerate the unpaid balance of the Note, whereupon said Note shall immediately become due and payable without notice.

(b) The Lender shall have the right but not the obligation to refuse to make further disbursements from the loan in process account until such time as all events of default have been cured.

(c) The Lender shall have the right but not the obligation to withdraw any funds on deposit with it under the terms of this Agreement and credit the same indebtedness of the Borrower or upon the interest and/or principal of the Note, and thereupon the Lender shall be released from any and all obligations to the Borrower under the terms of this Agreement.

(d) The Lender shall have the right but not the obligation to take possession of the real property and any and all materials located upon said property.

(e) The Lender shall have the right but not the obligation to take over and complete the work of improvement and, for that purpose, to make disbursements from the loan in process account. Any contracts entered into or indebtedness incurred upon the exercise of this right may be in the name of Borrower, and the Lender is hereby irrevocably appointed attorney-in-fact (said appointment being coupled with an interest) to enter into said contracts, incur such obligations, enforce any contracts and documents as may be deemed necessary by counsel for the Lender. In no event shall the Lender be required to expend its own funds to complete the work of improvement if

the funds in the loan in process account are insufficient, but the Lender may, at its option, advance such funds. Any funds so advanced shall be payable to the Lender by Borrower on demand, together with interest at the rate set forth in the Note and until paid.

In addition to the specific rights and remedies hereinabove mentioned, the Lender shall have the right to avail itself or any other rights or remedies to which it may be entitled under California law including, but not limited to, obtaining appointment or a receiver to complete the work of improvement. All the rights and remedies of the Lender provided for in this Agreement are cumulative.

21. **No Waiver.** It is understood and agreed that, in the event the sums on deposit are credited on the Note pursuant to Paragraph 20(c), the same shall not in any respect cure or waive any default under this Agreement or the Deed of Trust, or any notice of default, or invalidate any act done

pursuant to any such notice, and such credit on said Note shall not change, alter or prejudice any rights of the beneficiary given under the Deed of Trust. Furthermore, the waiver by the Lender of any breach hereof shall not constitute a waiver of any subsequent breach or breaches on the part of the Borrower.

22. **Authority to File Notices.** The Borrower does hereby appoint and authorize the Lender, as agent, to file for record any notices of completion, cessation of labor, or any other notice that said Lenders deems necessary to protect any of the interest of the Lender under this Agreement or the Note and Deed of Trust. However, it is agreed that the Lender is under no obligation to do so and shall incur no liability to the Borrower for failure to file any such notice. The appointment of the Lender, as in this paragraph provided for, is hereby expressly declared to be that of an agency coupled with an interest and as such is irrevocable.

23. **Agency. In addition to acting for Borrower, «80» (The Company) may act for itself or for another lender. The company may loan its own funds or obtain loan funds from or assign loan to any of the following: (1) Institutional lenders; (2) Government agencies; (3) Private parties. The Company may collect payments and enforce remedies for its own account or for another lender, and be compensated for these services. Upon close of escrow, The Company shall no longer act as agent for Borrower, except in those capacities specifically called for in this agreement. The Company may however, continue to act as agent for the Lender or for itself for the purpose of disbursing funds pursuant to the terms of this agreement and the servicing of this loan.**

24. **No Joint Venture. Nothing in this Agreement shall be construed as creating between the Lender and the Borrower and/or contractor the relationship of a joint venture or partnership or agency (except as provided in Paragraphs 20(e), 22 and 23 hereof), and the Lender shall in no way be liable for any acts or omissions of the Borrower, agent, contractor or any person furnishing the labor and/or the materials used in or related to such construction.**

25. **Commencement and Defense of Actions; Indemnification.** The Lender shall have the right to commence, to appear in, or to defend any action or proceedings purporting to affect the rights, duties or liabilities of the parties hereto or the payment of any funds on deposit, and in connection therewith to incur and/or pay all costs and expenses, including reasonable attorney's fees, all of which the Borrower agrees to pay the Lender upon demand. To the extent that the funds on deposit are sufficient, the Lender shall have the right, but shall not be obligated to pay said costs, expenses and/or attorney's fees out of said funds. In addition, the Lender may, at its option, require the Borrower to commence, to appear in, or to defend any action or proceedings purporting to affect the rights, duties or liabilities of the parties hereto or the payment of any funds on deposit and, in doing so, may require the Borrower to employ an attorney, reasonably satisfactory to the Lender.

The Borrower further agrees to indemnify and hold the Lender harmless from any liability from any third party arising out of the Lender's participation as Lender for the work of improvement and to reimburse the Lender for all expenses incurred (including court costs and attorney's fees) in the defense of any suit seeking to impose such liability.

The Borrower further agrees to indemnify and hold the Lender harmless from any and all liabilities, claims, damages, costs and expenses (including but not limited to reasonable legal fees and disbursements) arising out of or resulting from any defective workmanship or materials occurring in the construction of the improvements. Upon demand by the Lender, the Borrower will defend any action or proceedings brought against the Lender alleging any workmanship or materials, or the Lender may elect to conduct its own defense at the expense of Borrower. The provisions of this paragraph will survive the termination of this agreement and the repayment of the loan.

26. **Attorney's Fees.** In any action which may arise from any dispute between Borrower and the Lender regarding the Provisions of this agreement and/or arising out of the Lender's participation as Lender for the work of improvement, the prevailing party in any such action shall be entitled to recover from the other party a reasonable attorney's fee in addition to his costs and necessary disbursements.

27. **Conflicting Demands upon the Lender.** In the event conflicting demands are made or notices served upon the Lender with respect to anything covered hereby, the Borrower expressly agrees that the Lender shall have the absolute right, at its election, to do either or both of the following thing:

(a) Withhold and stop all further proceedings and performance of this Agreement, or

(b) File a suit in interpleader and obtain an order from the court requiring the parties to interplead and litigate in such court their several claims and rights among themselves.

In the event such interpleader suit is brought, the Lender shall be thereupon fully released and discharged from all obligations to further perform any and all duties and obligations imposed upon it hereunder, and the Borrower agrees to pay to the Lender all costs, expenses and reasonable attorney's fees expended or

incurred by the Lender, the amount thereof to be fixed and a judgment thereof to be rendered by the Court in such suit.

28. **Time.** Time is hereby expressly made the essence of this Agreement.

29. **No Third Parties Benefited.** This Agreement is made for the sole protection of the Borrower and the Lender, their successors and assigns, and no other person or persons shall be benefited or have any right of action hereunder.

30. **Entire Agreement.** This Agreement, the loan application, the commitment letter issued to the Borrower by the Lender, the documents referred to herein and the Note and Deed of Trust above mentioned contain all of the terms and conditions agreed to by the Borrower, or any or all of them, and the Lender, and all of said documents constitute the entire agreement between the parties and are

incorporated herein by this reference. No other agreements regarding the subject matter of this Agreement, unless in writing and signed by the Lender and the Borrower, shall be deemed to exist or to bind any party hereto.

31. **Gender, Singular and Plural Interchangeable.** In this Agreement, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural, and vice versa.

32. **Captions.** The captions at the beginning of the paragraphs of this Agreement are for convenience only and are not a part of this Agreement. They shall not be construed as in any way limiting or expanding the terms and provisions of this Agreement.

33. **Severability.** Any provision or provisions of this Agreement which shall prove to be invalid, void or illegal, shall in no way affect, impair or invalidate any other provisions hereof, and the remaining provisions hereof shall nevertheless remain in full force and effect.

34. **Borrower Acknowledges Reading and Understanding Agreement.** **The Borrower hereby acknowledges that he has read this Agreement prior to executing said Agreement in the space provided below, and further acknowledges that he understands the terms of this Agreement.**

35. **Notices.** Notices shall be given to the parties at the respective addresses listed below. Such addresses may be changed by written notice given to the other party in the manner prescribed herein. All notices required to be given pursuant to this Agreement shall be deemed served upon deposit in the United States mail, postage prepaid, first class or certified mail, and addressed to the parties as follows:

«f5» «f6» «f7» - Borrower/Date

«f10» «f11» «f12» - Borrower/Date

«f80» - (as Agent for the Lender(s) herein)/Date

(To be completed only where contractor is not the owner)

Undersigned is the general contractor for the project which the foregoing Construction Loan Agreement covers.

It is Undersigned's understanding that Lender will not make the loan referred to therein, the net proceeds of which are to be used pursuant to such agreement in the construction of such project, unless Undersigned agrees to be bound by the terms thereof.

Undersigned has read the Agreement and has been furnished a copy thereof. Undersigned understands the provisions of said Agreement and in order to induce Lender to make the loan, and for other good and valuable consideration, receipt of which is hereby acknowledged, agrees to be bound by such provisions in its construction of the project. Undersigned, without limitation on the foregoing, specifically agrees (1) to commence construction of the proposed improvements promptly after recordation of said Lender's Deed of Trust, and not before, (2) to continue such construction with reasonable speed and in a workmanlike manner, and (3) to complete such improvements promptly in accordance with the plans and specifications described in said Agreement, including any specifications prescribed by the Lender and with all requirements of all governmental authorities having asserting jurisdiction.

Contractor	License No.	Tax I.D. No.
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