

Lender for payment. The Certificate of the Supervising Engineer shall be according to a form required or approved by Lender (such Certificate to cover an inspection which was made not more than seven (7) days prior to the date on which such advance is to be made).

(c) No advance shall be made pursuant to this Agreement if the amount of such advance, plus all amounts previously advanced hereunder, shall exceed the lesser of: (i) for Construction Loans, 75% (80% if FHA/VA firm commitment) of the appraised improved value of the Mortgaged Property as submitted to and approved by Lender, or (ii) for Development Loans or the development loan portion of Construction Loans, 60% of the value of the real estate as developed, or (iii) an amount which would not be in excess of the unconditional floor amount of the firm purchase commitment issued by the Long Term Lender in connection with this project, if any.

(d) Disbursing Agent shall disburse all proceeds of the Loan Fund in such manner as to cooperate with the Title Insuring Agent in order to maintain the Title Insurance Policy or Binder referred to in this Agreement in full force and effect at all times. Title Insuring Agent agrees to maintain compliance in this regard at all times during the pendency of this Agreement, including, but not limited to, the imposition of conditions relating to sworn statements, waivers or releases of liens, plus all paid bills, inspection of payroll vouchers and submission of Supervising Engineer's Progress Inspection Certificates, surveys, survey continuations, abstract or title continuations, as Title Insuring Agent may deem necessary to insure the priority of Lender's mortgage as a valid first lien at the time of each disbursement. Where Title Insuring Agent and Disbursing Agent are not one and the same, Title Insuring Agent agrees to fully instruct Disbursing Agent with regard to said requirements in connection with each loan advance request, and Disbursing Agent agrees to comply with each of such instructions. Prior to any subsequent loan advance request submitted by Disbursing Agent to Lender, Title Insuring Agent agrees to confirm with Disbursing Agent that all such instructions of Title Insuring Agent with reference to previous advance requests were properly performed or fulfilled.

(e) If at any time pending or during the disbursement of this loan, it appears that the net proceeds remaining undisbursed of the loan amount will be insufficient to complete all of the improvements in accordance with the plans and specifications, and to pay for all labor, material and costs, Borrower shall, upon Lender's demand, deposit with the Disbursing Agent or with Lender, at Lender's option, additional monies which shall, when added to the undisbursed proceeds of the loan, be sufficient to complete and pay for the improvement costs and expenses in connection therewith. The amount so deposited shall be disbursed to pay for the improvements before any additional loan proceeds of Lender are to be paid out.

(f) All costs incident to the loan shall be paid by Borrower when and as required by Lender or Disbursing Agent, including bank wire, telephone, or other loan advance transmission charges of the Disbursing Agent, or Lender, and the fees of Disbursing Agent for its services to be rendered in said capacity.

(g) The method and schedule of advances and the Contractor's application for Loan Progress payments shall be in the manner as approved or determined by Lender, or its designee, from time to time, provided that 10% of all Loan Progress payments shall be withheld until final payment is due.

(h) Upon the occasion of applying for Loan Progress Payment No. 2, the Contractor and the Borrower shall obtain and furnish to the Disbursing Agent lien waivers and receipted bills in such forms as it is required, covering the payment of all labor, services, and materials contemplated to be paid out of Loan Progress Payment No. 1; and, similarly, upon the occasion of applying for each Progress Payment thereafter, a like showing shall be made as to the persons paid under the last previous Loan Progress Payment. It is the intention and agreement of the parties that unless otherwise specified in writing by Lender, all Loan Progress Payments shall be paid by Disbursing Agent in the form of separate remittances made payable to each of the persons or firms contemplated to be paid under the Contractor's request for advance. No payment shall be applied for by Contractor or Borrower, or made of any kind, when the required lien waivers and receipted bills show them to be in an amount in excess of the amount shown in the breakdown as is necessary for the completion of the Construction and/or Development Project. The Borrower shall only be entitled to payment in the amount approved by Lender with respect to each requisition or application for advances or progress payments under this Agreement. All advance requests submitted to Disbursing Agent and Lender shall be in accordance with procedures and forms required or approved by Lender.

(i) It is the intention of the parties that Lender shall deduct from the loan fund on the first of each month, or at such other times as may be determined by Lender, all accrued interest, purchase or extension discounts or other loan charges or amounts due to Lender under the Provisions of the Loan specified herein.

(j) All loan advances are to be made at the principal office of the Lender, or at such other place as Lender may designate, and shall be deposited by Lender in an account to be established by the Disbursing Agent in the manner approved by Lender, at a Bank, Escrow or Title Company specified or approved by Lender, the expense of which shall be borne by Borrower. Unless otherwise specified, requests for advances shall be submitted by Disbursing Agent to Lender five (5) days prior to the date of the requested advance.

(k) It is understood and agreed between the Borrower and Lender that regardless whether Lender makes advances out of the loan fund to itself, to the Disbursing Agent, to the Contractor, or to any person furnishing or performing labor, material, or services to the said construction job, or to any other persons or firms contemplated under the total project cost breakdown or under this Agreement, Borrower shall and does hereby agree that said payment constitutes an irrevocable direction and authorization by the Borrower to the Lender to so advance the funds. No future direction or authorization from Borrower shall be necessary to warrant such advances and all such advances shall satisfy pro tanto the obligations of Lender hereunder and shall be secured by the mortgage as fully as if made to Borrower directly.

(l) Contractor shall, upon demand of the Supervising Engineer, correct any structural defects in the improvements or any departure of the plans not approved by him, in the same manner as though the request had been made by the Borrower. The advance of any loan proceeds under the loan fund shall not constitute a waiver of Lender's right to require compliance with this covenant with respect to any such defects or departures from the plans not theretofore discovered by or called to the attention of the Supervising Engineer.

(m) All conditions of the obligations of Lender to make advances hereunder and otherwise provided in this Agreement are imposed solely and exclusively for the benefit of Lender or its assigns, and no other person shall have standing to require a satisfaction of such conditions, or be entitled to assume that Lender will refuse to make advances in the absence of strict compliance with any or all thereof, and no other person shall, under any circumstances, be deemed to be beneficiary of such conditions, any or all of which may be fully waived in whole or in part by the Lender at any time, if in its sole discretion it deems it advisable to do so, nor shall any such waiver have the effect of precluding Lender from thereafter declaring such non-compliance of the terms of this Agreement to be an event of default as hereinafter provided.

4. The Lender and its agents shall at all times during development and/or construction have the right of entry and free access to the property upon which the improvement is being made, and the right to inspect all work done, labor performed and materials furnished, in or about the property.

5. The Borrower and Contractor understand and agree that the Lender is not the agent or representative of the Borrower, and neither Borrower nor Contractor is the agent of the Lender, and this Agreement shall not be construed to make the Lender liable to materialmen, contractors, craftsmen, laborers or others for goods or services delivered by them upon said premises, or for debts or claims accruing to the said parties against the Borrower, and it is distinctly understood and agreed that there is no contractual relation either expressed or implied between the Lender and any materialmen, sub-contractors, craftsmen, laborers, or any other person supplying any work, labor or materials on the job.

6. If any miscellaneous items of cost or expense, or any other expenditures are incurred by Lender in connection with the Development and/or Construction loan, or in order to protect, preserve, or further secure the Lender's first mortgage lien; or, if Lender shall not make such advances directly to any contractor or sub-contractor unless Borrower is in default under the loan, or unless Borrower so directs.

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