

LOAN AGREEMENT

THIS AGREEMENT made and effective the ____ day of _____, _____.

BETWEEN:

[ISSUER], a body corporate, incorporated pursuant to the laws of _____, (hereinafter the "Lender")

OF THE FIRST PART

and

[DEVELOPER], a body corporate, incorporated pursuant to the laws of _____, (hereinafter the "Borrower")

OF THE SECOND PART

RECITALS

WHEREAS:

- A. The Lender is or will be a party to a Co-Ownership Agreement dated effective the ____ day of _____, _____, executed or to be executed in counterparts by a number of investors who have contributed or will be contributing to a fund as described in the Co-Ownership Agreement from which the loan hereunder will be made;
- B. The Borrower wishes to borrow money from the Lender and provide sufficient security to ensure the repayment thereof;
- C. The Lender has agreed to provide the Borrower with a loan of not more than _____ Dollars (\$_____) upon and subject to the terms and conditions herein contained;
- D. The Borrower is the legal and beneficial owner of all that property located in _____, _____, legally described as follows, which property will be offered as security for repayment of the said Loan:

TOGETHER WITH the appurtenances thereto belonging or appertaining and the reversion or reversions, remainder or remainders, rents, issues and profits thereof and all buildings, erections, improvements, machinery, plant, elevators, escalators, walkways, parking structures, engines, furnaces, oil burners, boilers, air conditioning, ventilating, water heaters, electric fixtures, water fixtures, gas fixtures, window blinds and fixtures, plumbing and heating equipment, carpeting and all apparatus and equipment appurtenant thereto which are now or shall hereafter be placed or installed thereupon including buildings now or hereafter erected or placed thereon and all of which to the extent the parties may do so, are declared and deemed to be fixtures, an accession to the freehold, a part of the realty and a portion of the security for the indebtedness herein mentioned, and all the estate, right, title, interest, property and claim therein of the Mortgagor, in, to or upon the same and of, in and to every part and parcel thereof (all of the foregoing being herein collectively referred to as the "Lands");

provided always, however, that, notwithstanding the foregoing or anything else in this Loan Agreement, this Loan Agreement shall not extend or apply to any purchase money security interest in any personal property of the Borrower.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the covenants and agreements herein contained and other good and valuable consideration, the parties hereto covenant and agree as follows:

ARTICLE I- INTERPRETATION

1.01 Definitions - Unless the context otherwise requires the words, phrases and expressions used herein or in the recitals or in any schedule hereto or in any document in connection with the transactions contemplated hereby shall have the meanings hereby assigned to them, namely:

- (a) "Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section, paragraph or other portion hereof and include any agreement or instrument supplemental or ancillary hereto and the expression "Article", "Section" or "paragraph" followed by a number means and refers to the specified Article, Section or paragraph of this Agreement;
- (b) "Assets" means the assets of the Borrower and includes the Lands;
- (c) "Authorities" means any agency, board, bureau, commission, branch, office, division, department, ministry or instrumentality of any municipal, regional, provincial, federal or other government or any other public agency or official or supplier of utilities or services having jurisdiction over the Lands or any aspect thereof;
- (d) "Borrower" means [DEVELOPER];
- (e) "Calendar Quarter" means the three month periods ending on the last day of March, June, September and December in each year;
- (f) "Certificate" means the certificate made by the Borrower addressed to the Lender and dated as at the Disbursement Date in substantial conformity with the form set forth in Schedule "A" annexed hereto;
- (g) "Closing Certificate" means the certificate executed by the Lender and the Borrower in accordance with Section 5.05 hereof and attached hereto as Schedule "A";
- (h) "Disbursement Date" means the date on which all of the conditions precedent of the Lender and the Borrower have been completed in accordance with Article IV hereof;
- (i) "Events of Default" means any of the events specified in Section 10.01 of this Agreement or any other default specified herein or in the other Security Documents;
- (j) "Financial Information" means the financial information and documents supplied to the Lender by the Borrower;
- (k) "Generally Accepted Accounting Principles" means those generally accepted accounting principles promulgated by the Canadian Institute of Chartered Accountants and which are in effect in Canada at the time the expression is applied;
- (l) "Lender" means [ISSUER];

- (m) "Loan" means the original principal amount of not less than _____ **DOLLARS (\$_____)** to be advanced by the Lender in accordance with the provisions of this Agreement and includes any further disbursement of funds to the Borrower or any other party permitted or required by the terms of this Agreement, the Mortgage or any of the Security Documents;
- (n) "Loan Advance" means the disbursement of the Loan by the Lender, and includes any partial or further disbursement of funds to the Borrower or any other party permitted or required by the terms of this Agreement, the Mortgage or any of the Security Documents;
- (o) "Mortgage" means the mortgage dated effective the _____ day of _____, _____, granted by the Borrower to the Lender, which mortgage is attached hereto as Schedule "B";
- (p) "Promissory Note" means the promissory note or promissory notes made by the Borrower as maker in favour of the Lender as holder substantially in the form set forth in Schedule "C" annexed hereto;
- (q) "Representations and Warranties" means the representations, warranties and covenants of the Borrower set forth in Article VI of this Agreement; and
- (r) "Security" or "Security Documents" means this Agreement, the Promissory Note, the Mortgage, and the Certificates furnished by the Borrower pursuant to the provisions of this Agreement, together with such other security as the Lender shall reasonably require to secure the Loan Advances made hereunder.

1.02 Extended Meanings - Words importing the singular number include the plural and *vice versa* and words importing the masculine gender include the feminine and neuter genders and *vice versa* and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.

1.03 Headings - The division of this Agreement into Articles, Sections and paragraphs and the insertion in this Agreement of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.04 Applicable Law - The rights and remedies of all of the parties hereto and the construction and effect of each and every provision of this Agreement and the Security Documents shall be subject to the exclusive jurisdiction of and be construed according to the laws of the Province of _____ and Canada and the Courts of the Province of _____ shall be the exclusive forum for any proceedings in connection with the provisions thereof. The parties hereto hereby irrevocably attorn to the exclusive jurisdiction of the Courts of the Province of _____.

1.05 Time of Essence - Any notices or communications required or permitted hereunder shall be delivered within the time specified herein or by the Security Documents, and time shall in all respects be of the essence; provided, however, that whenever the last day for the completion of any obligation, or the giving of any notice, or the deliver of any communication or the exercise of any right or the discharge of any obligation thereunder shall fall upon a Saturday, a Sunday or a public or legal holiday, then the parties shall have until 4:00 p.m. (_____ time) on the next succeeding business day to complete the Loan, give such notice, deliver such communication, or exercise such right or discharge such obligation.

1.06 Currency - All monetary designations referred to herein are expressed in lawful money of Canada.

1.07 Rules of Interpretation - Unless the context otherwise requires:

- (a) a capitalized term has the meaning assigned to it in this Agreement;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with Generally Accepted Accounting Principles;
- (c) "or" shall be read as inclusive and not as exclusive;
- (d) the provisions hereof apply to successive events and transactions; and
- (e) this Agreement is to be deemed to have been prepared jointly by the parties hereto and any uncertainty or ambiguity existing herein, if any, shall not be interpreted against any party, but shall be interpreted according to the application of the rules of interpretation for arm's length agreements.

1.08 Schedules - All of the schedules annexed hereto are incorporated herein by reference and are deemed to be part of this Agreement, namely:

- (a) Schedule "A" - Certificates of Corporation;
- (b) Schedule "B" - Mortgage;
- (c) Schedule "C" - Promissory Note;
- (d) Schedule "D" - Permitted Encumbrances.

1.09 Priority of Schedules - Where any inconsistency exists between the language of this Agreement and any of the Schedules, the language of this Agreement shall prevail.

1.10 Entire Agreement - This Agreement including the schedules hereto and the other Security Documents constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof and there are not and shall not be any oral representations, warranties, undertakings or agreements between the parties hereto.

ARTICLE II - TERMS OF THE LOAN

2.01 Commitment - The Lender shall advance the Loan to the Borrower and the Borrower shall accept the Loan from the Lender upon and subject to the terms and conditions herein contained.