

FORM 3A.10 COMMITMENT LETTER FOR CONSTRUCTION MORTGAGE LOAN WITH VARIABLE INTEREST RATE

[Identification of property]

Dear [name]:

We are pleased to inform you that our loan committee has approved your application for a first mortgage construction loan in the amount of ____ Dollars (\$____) on your fee interest in the above captioned premises, and the improvements to be erected thereon consisting of [description of project]. The loan is to bear interest at the rate of ____ percent (____%) above our prime rate, but is no event less than ____ percent (____%) per annum, in effect from time to time, payable monthly, and shall mature ____, but in no event later than thirty (30) days prior to the expiration of the permanent commitment hereinafter referred to. Interest shall be computed for the actual number of calendar days from the date of each advance calculated on the basis of a 360-day year.

This loan is further subject to the following terms and conditions:

1. *Term.* This commitment will, at our option, terminate unless the loan is closed by [date]. Such closing will be held at our offices at [address].
2. *Loan expenses.* Your acceptance of this commitment letter shall constitute your unconditional agreement to pay all out-of-pocket expenses incurred by us with respect to the transaction herein contemplated, whether or not this transaction is consummated. Such expenses incurred to date of closing will be payable at the closing, with any additional expenses thereafter to be paid immediately upon your receipt of an invoice from us.
3. *Brokerage fee and commission.* We will not be required to pay any brokerage fee or commission arising from this transaction, and you agree to defend, indemnify, and hold us harmless against such claims against this loan.
4. *Guarantee.* [Names] Shall jointly and severally guarantee payment of this loan.
5. *Title insurance.* You shall provide us with a report of title or certificate of title, the expense of which will be for your account. The policy shall contain a metes and bounds description of the premises, and shall insure our mortgage to be a valid first lien on your fee title to the premises. The title policy shall be issued by a title insurance company satisfactory to us, and the policy itself shall be satisfactory in all respects to the bank and its attorneys.
6. *Survey.* You shall provide us with an ALTA/ASCM survey of the premises satisfactory to us and our counsel, which survey shall be certified to the title company and to us. Upon completion of the foundations, you shall provide us with a revised survey showing the locations of foundations and an affidavit from the surveyor that setbacks are in conformity with current zoning restrictions. The expense of such survey shall be for your account.
7. *Insurance.* You shall provide us with evidence, at closing, of fire, extended coverage, and vandalism and malicious mischief coverage on the property in the form of a builder's risk, one hundred percent (100%), nonreporting policy in an amount to be determined by our engineers as the insurable value of the building. The policy shall be converted to a standard fire and extended coverage policy upon completion of construction, the amount to be determined by the permanent lender hereinafter referred to and us. The policies shall be issued by a company or companies satisfactory to us, and shall name us as first mortgagee and shall contain the standard mortgagee clause. The original policies shall be delivered to us when issued.
8. *Approval of plan and specifications.* You shall furnish final plans and specifications to our engineers [name and address], which plans and specifications shall be satisfactory to them and shall be acknowledged, in writing, as satisfactory to the permanent lender hereinafter referred to. The plans and specifications shall also be acknowledged, in writing, as satisfactory to the hereinafter referred lessees.
9. *Supervising architect.* The improvements under construction shall be subject to the supervision and approval of [name of architect] and the improvements and their proposed use shall comply with the zoning and building requirements. All zoning amendments and variances shall have been procured duly, and certificate of occupancy shall be obtained upon completion of construction.
10. *Advances on percentage of completion basis.* Advances under the building loan agreement shall be made on a percentage of completion basis with each advance subject to inspections and certifications by [name of architect]. Advances will also be contingent upon a clear continuation of title to the date of each advance.
11. *Cost breakdown.* You will be required to submit a detailed cost breakdown of the cost of the project for verification by [name of architect], and an itemization of nonconstruction and land costs for verification by us. If the direct construction costs, in the sole judgment of [name of architect], plus the estimated land and nonconstruction costs, in our sole judgment, exceed the base loan, you will be required to invest the amount of the difference in the project prior to any loan advances.
12. *Security agreement.* You shall execute and deliver to us additional security such security agreement or chattel mortgage as our counsel shall prepare in order to give us a first lien on all the items of personal property as

described therein. If the transaction comes within the scope of the Uniform Commercial Code, then you will execute such financing statements and other documents as are required to comply with the code.

13. *Appraisal.* This commitment is subject to our receipt and approval of an appraisal of the project, prepared by [name of appraiser] indicating a value of at least ____ Dollars (\$____), upon completion.
14. *Acceleration upon transfer of title.* The mortgage will contain a provision whereby the entire principal sum and interest will become due at the option of the mortgagee upon the sale, transfer, or conveyance of the mortgaged premises.
15. *Approval of instruments.* All instruments and documents in connection with the loan shall be subject to our approval and that of our counsel.
16. *Long-term financing.* You shall comply, in all respects, with, and shall keep in full force and effect, the long-term commitment of [name of long-term lender], dated _____. The commitment and any modifications thereto shall be satisfactory to us in all respects and our counsel.
17. *Rentals.* The outstanding balance of our construction loan will be limited to ____ Dollars (\$____) until such time as the rental achievement contained in the ____ commitment is satisfied, and the firm amount of the commitment is increased to ____ Dollars (\$____). The increase in the commitment shall be acknowledged, in writing, by the [name of long-term lender] and shall be satisfactory to us and our counsel.
18. *Assignment of leases.* The leases between [name], as lessor, and [name], as lessees, as well as any other leases affecting the subject premises, shall be satisfactory in all respects to us and our counsel, and shall be acknowledged in writing as satisfactory to the permanent lender. The leases shall be assigned to us at the time of closing. In the event that [name of long-term lender] has not approved the aforementioned leases required in the commitment letter dated ____, by the date of our closing, our loan agreement shall provide for a 60-day period during which [bank] must approve these leases and so acknowledge in writing. If such approvals, in a form satisfactory to us and our counsel, are not obtained within the 60-day period, a default will occur under our mortgage loan and we will have the right, at our sole discretion, to accelerate the maturity of the loan and/or increase the interest rate to ____ percent (____%) above our prime rate in effect from time to time.
19. *Assignment.* This commitment is not assignable by borrower.
20. You shall furnish us with financial statements for the borrowing entity. The statements shall be satisfactory in all respects to the bank.

If the foregoing is satisfactory, please indicate your acceptance by executing and returning to us the enclosed copy of this letter within fifteen (15) days from the date hereof. Otherwise, this letter will, at our option, be of no effect.

Very truly yours,

[bank]

By: [signature]