

Construction loans and mortgages; securing, subordination, etc.

Lessor agrees that at any time during the term hereof, it shall, if called upon by lessee, join with lessee in the execution of a mortgage or mortgages on the premises or any part thereof to secure a borrowing or borrowings of lessee for the purpose of constructing improvements on or otherwise benefiting the premises. The proceeds of any note or other indebtedness secured by such mortgage shall be disbursed solely for payment of obligations incurred by lessee in effecting this lease and constructing improvements on the premises and for costs incidental thereto and otherwise only as lessor and lessee shall agree in writing.

The form and content of any such mortgage in which lessor shall be requested to join shall be subject to the approval of lessor, which approval shall not be withheld so long as the terms and provisions of such mortgage are consistent with the provisions hereof, and such mortgage shall, without limitation by reason of specification, contain provisions to the following effect:

(a) Shall state that lessors join therein solely and exclusively for the purpose of subordinating its interest in the premises to the lien of such mortgage, and for no other purpose and, notwithstanding its inclusion as a mortgagor therein, without assuming any liability for the payment of the note or other indebtedness secured by such mortgage or for the performance or observance of any covenants or agreements contained in the note or other indebtedness or the mortgage;

(b) Shall provide that, notwithstanding any other provisions of the mortgage, in the event of any default in the performance or observance of any of the terms and conditions of the mortgage, or the note or other indebtedness secured thereby (which such default shall not have been cured within the grace periods therefor accorded to lessee, as mortgagor, in the mortgage), the mortgagee shall give written notice to the lessor of the continuance of such default and shall grant to the lessor an additional period (over and above any such grace periods) of 10 days from the date of lessor's receipt of such notice within which to cure such default, and shall provide that any payment made by the lessor pursuant to such provisions shall be recognized by the mortgagee as fully as if made by the lessee; provided, however, that neither such provision nor any other provision of the mortgage shall be construed so as to impose any liability whatever on the lessor to make any payment or to perform or observe any covenants or condition of the mortgage or note or other indebtedness secured thereby; and

(c) Shall or may provide for the assignment to the mortgagee of any rents due and payable to lessee under any sublease of the premises; provided, however, that such assignment of rents will be effective only upon default in the payment or performance of any obligations imposed by the terms of the mortgage or note or other indebtedness secured thereby.

The agreement of lessor to subordinate as set forth above is limited, however, to the extent that the aggregate of the gross rents to be paid to lessee pursuant to sublease agreements entered into between lessee and subtenants at all times during the term of this lease combine to establish an amount not less than the sum of the following:

(i). The aggregate of all initial amortized interest charges due upon any mortgage or mortgages entered into between lessee, as mortgagor, and all such mortgagees.

(ii). All real estate and personal property taxes levied in connection with the premises at such time and in such year as the initial phase of the improvements to be constructed on the premises have been substantially completed and the value thereof made a part of the applicable real estate and personal property tax assessment; provided, however, that in the event any sublessee of lessee, as sublessor, is contractually obligated to pay such real estate and personal property taxes in addition to sublease payments, the date upon which the sums described hereunder shall be ascertainable shall be at the time lessor executes the applicable subordination instruments.

(iii). The aggregate of all initial insurance premiums due upon any and all insurance policies relating to the premises which are in effect or contemplated at the time the subject subordination is executed.

(iv). The initial annual, minimum guaranteed ground rents due lessor hereunder.