Residential Acquisition/Construction/Permanent Loan

**12/11/2019**

**John A. Doe**

**Jane B. Doe**

**1 Mailing St, Apt. 111,**

**San Francisco, CA 94111**

*Re:* Conditional Acquisition/Construction/Permanent Loan Commitment to be Secured by the Property Located at **111 Pine St, Suite1800, San Francisco, CA 94111**

Dear **John A. Doe & Jane B. Doe**,

First Republic Bank (“Lender”) is pleased to inform you that your application for a residential mortgage loan (“Loan”) secured by the above-referenced property (“Property”) has been approved. The consummation and funding of the Loan are subject to the following terms and conditions:

1. **General Loan Terms:**

**Loan Amount:** The lower of: (a) $ **$1,000,000**; (b) **$900,000**% of the total costs (acquisition cost + hard construction costs + hard construction costs + soft costs + closing costs) to build the Property; *or* (c) **80.00%**% of the market value of the Property “as-complete” per plans and specifications.

# Initial Disbursement

**For Acquisition:** **80%**% of the lower of the purchase price or the appraised “as-is” value of the Property.

**Loan Term:** **360** months.

**Borrower(s):** **John A. Doe**

**Jane B. Doe**

**Guarantor(s):**  **Mark C. Purchaser**

**Megan D. Purchaser**

**Vesting:** **John and Jane Doe**

1. **Fully Adjustable Loan Terms**

**Construction Phase:** The construction phase will be for a term of **6** months, starting from the date of the construction loan closing, *i.e.* the date when Lender records the deed of trust/mortgage on the Property.

During the construction phase, you will pay interest at a rate equal to the Wall Street Journal Prime rate **4.50%**%. The interest rate will adjust monthly and be subject to a floor of **2.00%**% and a maximum interest rate of **14%**%. The interest rate will adjust monthly.

Your payments during the construction phase will be interest-only and based on funds advanced to you.

**Permanent Phase:** The permanent loan phase is for the balance of the 30-year term.

For the permanent phase, your rate will be based on the **11th District Cost of Funds/1/3 Month LIBOR** index, plus a margin of **0.50%**%. Your initial permanent phase interest rate will be determined at the time the Loan converts to the permanent phase. The interest rate will be subject to a floor of **2.00%**% and a maximum interest rate of **14%**%. The interest rate will adjust monthly.

Your Loan payments will be interest-only for the first 10 years of the permanent phase and will be fully amortizing for the remainder of the Loan term.

See the Initial Federal Truth in Lending Disclosure Statement or Loan Estimate, as applicable, for the finance charge, APR and payment information. See also the “Loan Program Disclosure” for information regarding possible post-closing changes in this Loan.

1. **Intermediate ARM Loan Terms**

**Construction Phase:** The construction phase will be for a term of **6** months, starting from the date of the Loan closing, *i.e.* the date when Lender records the deed of trust/mortgage on the Property.

During the initial **60** months of the Loan, the interest rate will be fixed. This rate is not locked at present, but will be locked (for a 60-day period) if the Lender receives this signed commitment letter and the commitment fee by the deadline below.

**Permanent Phase:** The permanent loan phase is for the balance of the 30-year term. During the permanent phase, the Loan will amortize on a **25**-year amortization schedule starting in month **61** of the Loan.

For the permanent phase beginning in month **61** of the Loan, your interest rate will be based on the 1 Month LIBOR Index, plus a margin of **5.00%**%. The interest rate will adjust monthly and your payments will be fully amortizing. The interest rate will be subject to a floor of **2.00%**% and a maximum interest rate of **14%**%. The margin is not currently locked, but will be locked when the rate for the construction period is locked.

If applicable, see “Initial Federal Truth in Lending Disclosure Statement” for the finance charge, APR and payment schedule. See also the “Loan Program Disclosure” for information regarding possible post-closing changes in this Loan.

**Prepayment Charge:** A full prepayment or partial prepayments may be made at anytime. However, if, within the first **10th** months of this Loan, the total of all prepayments during any twelve month period exceeds twenty percent (20%) of the original principal balance of this Loan, you will be required to pay a prepayment charge. The prepayment charge will be equal to the lesser of: (a) **20.00%** percent of the principal balance of this Loan immediately prior to the prepayment, or (b) six months’ advance interest on the amount prepaid that exceeds the allowable prepayment of 20% of the original principal balance, calculated at the interest rate in effect on the date of prepayment.

After the first **6** years of this Loan, you may make a prepayment without any prepayment charge.

**Loan Fees: 1.00%**% of the Maximum Loan Amount plus a processing and documentation fee of $ **$600**. **[REMEMBER THAT THE BANK CANNOT CHARGE PROCESSING, DOC PREP OR REDRAW FEES IN NJ AND CANNOT CHARGE DOC PREP OR REDRAW FEES IN NY.]**

1. **Additional Loan Terms**

**Restrictions:** If the Property is sold or conveyed, the Loan must be prepaid in full unless otherwise agreed in writing by Lender or unless prohibited by state or federal law. You agree that no financing by any other lender shall be secured by the Property without the prior written consent of Lender.

**Loan Documents and**

**Security:** The Loan will be made under a Construction Loan Agreement, be evidenced by your promissory note and be secured by a first deed of trust or mortgage, whichever is applicable, on the Property. You may be required by Lender to execute and deliver separate notes, mortgages, deeds of trust and/or other loan documents for the construction and permanent phases of the Loan. The Loan will also be secured by a security interest in all plans, specifications, drawings, contracts, equipment, fixtures, building materials, appliances and other personal property owned by you and associated with the construction project. If applicable, the Lender’s security interest shall be evidenced by an executed security agreement and UCC-1 Financing Statements filed with the state and county where the Property is located. All closing documents must be satisfactory to Lender in form and substance.

**Disbursements:** The Loan will be disbursed no more than once a month, according to the terms of the Construction Loan Agreement and terms of any disbursement agreement between Lender and any other disbursing agent Lender chooses to utilize for funds control and inspections.

**Indemnification:** If requested, you agree to indemnify the title insurance company and agent against mechanics and materialmen's lien risks associated with the construction project.

**Funds Control and**

**Inspections:** Lender and/or its authorized representative shall have the right to enter the Property for the purpose of making inspections as Lender deems necessary. These inspections are solely for the benefit of Lender. Lender is not in any way responsible for the construction of the improvements, their sufficiency or quality.

Lender uses a funds control company to monitor the progress of the project and flow of Loan funds. There is a funds control fee of $500. The funds control fee allows for 5 draws during the construction period. If additional draws will be needed, a fee of $500 per may be collected from you.

**Signs:** Lender is to be allowed to erect 2 construction financing signs on the Property.

# Documentation for Approval

In order for Lender to approve the Loan, the following must be received and approved by Lender:

1. Three years Federal tax returns and verification of all of Borrower’s assets and liabilities
2. Receipt and approval by Lender of a fully executed purchase contract and HUD-1 closing statement for the Property.
3. Current financial statements and credit reports (not more than 60 days old) showing no adverse material change in the financial position of Borrower(s).
4. All other information reasonably necessary for Lender to conclude that there is no adverse condition(s) affecting either the Property or the Borrower(s).
5. **Conditions to Closing of Loan:**

The closing of the Loan is subject to the terms and documentation specified below and those stated elsewhere in this letter. Unless stated otherwise, each required document or report must be received by Lender at least **10** business days before scheduled Loan closing. All items must be acceptable to Lender in both form and content and, as applicable, from insurance companies, qualified professionals or other providers acceptable to Lender.

1. Receipt and satisfactory review of a written appraisal for the Property showing an “as is” market value of at least $ **$1,000,000**. The appraiser will be selected at the sole discretion of the Lender. You must pay all appraisal costs.
2. Receipt and satisfactory review by Lender of Borrower’s organizational documents or pertinent pages of Borrower’s trust agreement, if applicable.
3. Receipt and satisfactory review by Lender of the title commitment or preliminary title report, as applicable.
4. All taxes and assessments that are due on the Property up to and including the calendar quarter in which the closing takes place must be paid in full.
5. To the extent permitted by law and applicable to the Loan, Borrower will pay at closing normal and customary closing charges for the Loan, including the cost of Lender's title insurance, tax service, credit report fees, appraisals, any environmental audit, points due at closing, and recording fees, taxes and other costs required in connection with Loan documentation. The actual costs and fees will be fully disclosed in the loan documents at closing.
6. An ALTA Lender's title policy (2006 Form) insuring Lender’s lien in the full amount of the Loan. The policy may be subject only to those exceptions approved by Lender and must contain all endorsements required by Lender. If requested by Lender, the policy will be updated with each disbursement to confirm that there are no mechanics lien claims or additional title exceptions objectionable to Lender.

Note: The occurrence of any demolition, excavation, or construction prior to Loan closing will affect your ability to obtain this Loan.

1. If the Property is in a Special Flood Hazard Area and located in a community that participates in the National Flood Insurance Program, flood insurance must be obtained and the policy must be in an amount acceptable to Lender and contain a standard mortgagee clause in favor of Lender.
2. In the event that the Maximum Loan Amount is insufficient to cover the total budgeted cost of the project as approved by Lender, you agree to deposit with Lender, prior to the first disbursement of Loan funds for construction costs, an amount sufficient to pay the shortfall. You further agree to be liable for the full amount of any excess over the budgeted cost of construction.
3. You agree that all construction is to be in accordance with the plans and specifications submitted to Lender and that no changes will be made to the plans and specifications unless, among other conditions, you deposit the full additional cost of the changes. Prior to the first disbursement of Loan funds for construction costs you agree to show evidence of post close liquidity in the amount of at least **80.00%**% of the approved hard construction cost budget in cash and/or marketable securities.
4. **Conditions to Disbursement of Construction Loan Funds Subsequent to the Initial Disbursement for Acquisition of the Property.**

In order for Lender to begin to disburse Loan funds for construction, the following must be received and approved by Lender:

1. The final working drawings and specifications for construction of the improvements to be financed by the Loan.
2. The final budget or cost itemization specifying the cost by item of (1) acquisition of the land; (2) all labor, materials and services necessary for the construction of the improvements in accordance with the plans; and (3) all other expenses anticipated by Borrower incident to the Loan, the Property and the construction of the improvements.
3. All contracts executed or to be executed by Borrower for the construction of the improvements, including a fixed pricecontract with progressive payments based on percentage of work completed for the construction of the improvements in accordance with the approved plans of no more than $ **$900,000**.
4. The approved site plan for the Property, all building permits required for the construction and all existing or proposed utility service agreement or site improvement agreements with governmental authorities.
5. A completed Contractor’s Information Package including Contractor Consent, Contractor Questionnaire, Contractor Acceptance Checklist, Authorization for Credit Report and a signed Progressive Payments Agreement.
6. The fully executed copy of the Borrower’s agreement with the architect and the Architect Consent form.
7. Receipt and satisfactory review of an appraisal of the Property, “as complete” per the plans and specifications in an amount no less than $ **$1,000,000**. The appraiser shall be selected at the sole discretion of the Lender. Borrower(s) shall pay all appraisal costs.
8. Reports deemed reasonably necessary by Lender to evaluate the condition of the Property, including, without limitation, geotechnical engineering reports, soil report and/or environmental site assessment.
9. A Course-of-Construction or Builder’s Risk Insurance Policy, whichever is applicable, must be obtained covering the Property must be obtained for the benefit of Lender as Loss Payee, in an amount that is not less than: (1) the replacement value of the Property, including construction materials, whenever stored (and which does not include any co-insurance contribution) or, (2) **$ $1,000,000**. The policy must provide that the policy may not be cancelled or modified without at least 10 days prior written notice to Lender.

Note: If the Property is currently improved, Lender will require hazard insurance prior to Loan closing. However, Lender will not require Course-of-Construction coverage until construction has actually begun.

1. Your contractor must have a commercial liability insurance policy and a Worker’s Compensation Insurance policy. The commercial liability policy should have coverage at least equal to the replacement value of the Property and the Worker’s Comp. insurance should satisfy the applicable statutory minimum. Copies of the commercial liability and Worker’s Compensation insurance certificates must be provided to Lender and Lender must be the certificate holder on both policies. Both policies shall provide that no cancellation or modification of the policies will be made without at least 30 days prior written notice to Lender. Borrower and Lender must be named as additional insured on the commercial liability policy.
2. All insurance must be provided by insurance companies with financial strength ratings acceptable to Lender.
3. In the event that the maximum amount of Lender’s Loan is insufficient to cover the total budgeted cost of the project as approved by Lender, Borrower agrees to deposit with Lender, prior to the first disbursement of Loan funds for construction costs, an amount sufficient to pay the shortfall. Borrower further agrees to be liable for the full amount of any excess over the budgeted cost of construction.
4. Borrower agrees all construction is to be in accordance with the plans and specifications submitted to Lender and that no changes will be made to the plans and specifications unless, among other conditions, Borrower deposits the full additional cost of the changes. Prior to the first disbursement of funds for construction costs, Borrower agrees to show evidence of post close liquidity in the amount of at least **80.00%**% of the approved hard construction cost budget in cash and/or marketable securities.
5. Lender reserves the right to reverify credit, employment, assets and liabilities 30 days prior to the scheduled first disbursement for construction costs. Lender may withhold disbursement of funds if (1) there is a substantial change in Borrower’s financial position, (2) there is an adverse change in the value of the subject Property, (3) any information given by Borrower to Lender in connection with Borrower’s application is false or misleading, (4) all payments on the Loan have not been received within the grace period or if any default exists under the Loan documents, or (5) if any of the conditions stated herein have not been satisfied in a timely manner.

**VII. Documentation for Permanent Loan Phase:**

The Construction Loan Agreement, in conjunction with the promissory note, deed of trust or mortgage, whichever is applicable, and other Loan documents, will govern many of the terms of the Loan and establishes the conditions that must be met before the permanent loan phase commences. Some of those conditions are as follows:

1. Receipt and acceptance by Lender of form 442, which is a certification by the original appraiser that the construction on the Property was completed in accordance with the original plans and specifications. Lender may request a new appraisal at this time, at Lender discretion.
2. Receipt and acceptance by Lender of a copy of the recorded Notice of Completion.
3. Receipt and acceptance by Lender of a copy of the final sign-off of the project and a Certificate of Occupancy issued by the governing municipality.
4. Receipt of a final date down of the Lender’s title insurance policy.
5. Written confirmation of homeowners insurance for the total loan amount, or the replacement cost, whichever is greater.
6. **Acceptance:**

This commitment will only be effective if signed by each Borrower and, if applicable, each guarantor and returned to First Republic Bank by 5 p.m. on **2/9/2020** along with a commitment fee of $ **$1,000**. Once you sign this commitment, you are obligated to accept the Loan on the terms and conditions stated in this commitment.

This commitment fee will be credited toward closing costs at loan closing. However, if the Borrower fails to consummate this Loan under the terms of this letter, the commitment fee will be returned to the Borrowers, less actual expenses incurred by First Republic Bank.

By signing below, you acknowledge that you understand that the Construction Loan Agreement, in conjunction with the Promissory Note, Mortgage/Deed of Trust and other closing documents will govern many of the terms of your Loan and establishes the conditions that must be met before the permanent phase of the Loan begins.

This commitment is personal only to the Borrowers named herein and may not be assigned or transferred. If you find the terms of the commitment offer acceptable, please evidence your acceptance by signing below. Until receipt by First Republic Bank of such written acceptance by 5 p.m. on **2/9/2020**, First Republic Bank shall have no liability of any kind hereunder.

Sincerely,

**Julia Closer**

**Manager**

Attachments:



*To*: First Republic Bank

The undersigned hereby accept(s) the foregoing offer. The undersigned acknowledge(s) that the foregoing, including the standard loan terms and conditions made a part thereof, has been read and understood and that a loan made pursuant thereto shall be subject to the conditions described above. It is hereby warranted that all facts and circumstances pertaining to the loan are as reported. Enclosed is a check for $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Agreed and accepted this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

By:

(Borrower)

By:

(Borrower)

By:

(Guarantor)

By:

(Guarantor)