

# REHABILITATION LOAN AGREEMENT

THIS AGREEMENT ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between the Borrower(s) \_\_\_\_\_ ("Borrower") and \_\_\_\_\_ (Correspondent "LENDER").

WHEREAS, LENDER, is a duly licensed mortgage originator and approved FHA 203(k) Lender with principal offices at \_\_\_\_\_, who may from time to time use licensed third parties, including at times, affiliates, to provide some of its lending services;

WHEREAS, Borrower, an individual(s) residing at \_\_\_\_\_ desiring a loan from LENDER for the purchase or refinance and rehabilitation through an FHA 203(k) Program of the National Housing Act subject to all regulations and procedures established by FHA guidelines in connection with the rehabilitation of a property located in the County of \_\_\_\_\_ State of \_\_\_\_\_ and which is commonly described as \_\_\_\_\_ ("Property"); and

WHEREAS, LENDER and Borrower desire to the establish the conditions under which LENDER will advance the proceeds of a loan to be used to purchase, refinance and/or rehabilitate the Property as hereinafter defined.

NOW THEREFORE, LENDER and Borrower, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, enter into this Agreement ("Agreement") effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and incorporates all recitals and terms and conditions below.

- 1) The total amount of the loan will be in the principal amount of \$\_\_\_\_\_ to be advanced to Borrower by LENDER as provided in this Agreement and as evidenced in a promissory note of even date herewith ("Note"), all, secured by a mortgage or deed of trust ("Mortgage"), which shall be a first lien on the above Property.
- 2) Payments required under the Note and Mortgage must be made by the Borrower on the date specified, even though the proposed rehabilitation or improvement may not be completed, or the Property may not be suitable for occupancy, on the anticipated date.
- 3) LENDER intends to request the Assistant Secretary for Housing-Federal Housing Commissioner ("Commissioner") to insure the loan under the provisions of Section 203(k) of the National Housing Act (the "Act"); and Borrower hereby agrees to conform to, and to cause improvements to be constructed in conformance with all requirements of the Commissioner and the Act.
- 4) LENDER shall place that portion of the principal amount of the Note allocated to the total rehabilitation cost, plus any amount deposited by the Borrower or others in cash, in a secured interest bearing account, trust or escrow for the benefit of the Borrower ("Escrowed Funds") subject to the terms and conditions herein and in related agreements.
- 5) LENDER shall only release Escrowed Funds twice (subject to withholding \$300.00 to be used for final inspection fees and subject to a Contingency Reserve). Up to 50% of the Escrowed Funds held for the repair costs will be disbursed: a) on a purchase, when the loan initially funds; or b) on a refinance, after the Borrower's right of rescission expires. The remaining balance (again, as noted, subject to withholding \$300.00 to be used for final inspection fees and subject to a Contingency Reserve) will be released after: a)

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a Letter of Completion; b) a satisfactory final Compliance Inspection Report from the approved Appraiser; c) a Draw Request; d) an executed Lien Release from Contractor; d) an executed Contingency Release letter; and, if required, e) issuance of a Certificate of Occupancy, or equivalent, or other final approval by the appropriate governing entity, are all received by LENDER.

- 6) LENDER shall, subject to the foregoing, release the Escrowed Funds by check, payable to the Contractor, or other appropriate payee who performed the Work, as defined in the Homeowner/Contractor Agreement, and supplied the materials in connection with this Agreement. Additionally, the final release of the escrow funds is to take place only after, *inter alia*, the local jurisdiction has provided its final acceptance of the Work and issued a Certificate of Occupancy, or equivalent, if applicable.

If a Mortgage Payment Reserve is established in the Escrow Funds account, the Lender may draw from the account to make the monthly mortgage payments provided the dwelling has not been occupied and/or the Final Release Notice has not been issued.

LENDER may determine that additional compliance inspections are required throughout the rehabilitation process to ensure that the Work is progressing in a satisfactory manner. Release of funds is not authorized on this type of inspection; however, Borrower is responsible for paying the inspection fee. LENDER may require an inspection if there have been no draw requests for more than 30 days.

- 7) a. The cost of repair as indicated on the appraisal report and Homeowner/Contractor Agreement is \$\_\_\_\_\_.
- b. The reserve contingency required by LENDER is \$\_\_\_\_\_.
- c. The estimated cost of the final inspection(s) from the approved Appraiser after all of the Work is completed is \$300.00.
- d. The total Escrowed Funds for the Property is (the sum of 7a, b and c) \$\_\_\_\_\_.
- e. The amount to be released at the initial funding of the loan is (cannot be more than 50% of 7a.) \$\_\_\_\_\_.
- 8) The interest accumulated in the Escrow Funds account will be distributed as required by the 203(k) Borrower's Acknowledgment, form HUD 92700-A.
- 9) If the contingency reserve (as per 7b.) or any part thereof is not used, the remaining balance shall be applied as a partial prepayment of the principal balance of the Note. **Such prepayment will not extend or postpone the due date of any monthly installment due under the Note, nor change the amount of such installments.**
- 10) If a dispute arises between the Borrower and the approved General Contractor, the Borrower has the right to hire a new General Contractor. That Contractor must first be approved by LENDER prior to any work starting. The Borrower CANNOT act as a General Contractor. If a new General Contractor is not approved by LENDER and the work is not done within ninety (90) days from the note date, LENDER may, in its sole discretion, make a principal reduction payment with the Escrow Funds. **If the Escrow Funds are used to make such a principal reduction, the final payment to the Contractor will not be available from LENDER and shall be the sole responsibility of Borrower.**

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- 11) The Borrower will insure that all improvements on the Property are completed pursuant to a, and in accordance with, a Homeowner/ Contractor Agreement as accepted by LENDER, including but not limited to, in accordance with the time constraints set forth in the Homeowner/ Contractor Agreement.
- 12) Changes in the Homeowner/ Contractor Agreement must be approved by LENDER in writing prior to the beginning any Work. Changes may be requested by writing a letter describing the changes or using form HUD-92577 (a "Request for Acceptance of Changes"). The Request for Acceptance of Changes may be hand delivered, mailed or emailed to [203k@afwrwholesale.com](mailto:203k@afwrwholesale.com) or faxed to 866 -797-3137. If you have any questions, please call 800-624-0501.
- 13) Borrower shall cause all improvements to be made in a workmanlike manner and in accordance with all applicable statutes and regulations. All licenses, permits and privileges required by local governmental authorities to rehabilitate the Property shall be obtained by the Borrower(s) or his/her Contractor and submitted to LENDER prior to closing.
- 14) Representatives of LENDER and or the Commissioner shall have the right to enter upon the Property at all times during the period of construction and on completion of construction to determine whether the Work conforms with this Agreement and the Homeowner/ Contractor Agreement, and any approved changes to the foregoing, and to determine the amount of Escrow Funds to be released by LENDER.
- 15) Borrower will furnish such records, contracts, bills and other documents relating to the Property and the improvements as LENDER or the Commissioner may require.
- 16) Without prior, written consent of LENDER, no materials, equipment, fixtures or any part of improvements financed with this loan will be purchased or installed subject to conditional sales contracts, security agreements, lease agreements or other arrangements whereby title is retained or the right is reserved or accrues to anyone to remove or repossess any item, or to consider it as personal property.
- 17) The Borrower shall cause either this instrument or the Homeowner/ Contractor Agreement under which the improvements are to be made to be filed in the public records, if the effect of recording will be to relieve the mortgaged property from mechanics' and materialmen's liens. Before any release of Escrowed Funds under this Agreement, LENDER may require the Borrower to obtain acknowledgment of payment and releases of lien from the Contractor and all subcontractors and materialmen dealing directly or indirectly with the Contractor ("Lien Release"). These Lien Releases will cover the period through and including the date covered by the last advance, and concurrently with the final payment for the entire project. Such Lien Release must be in the form required by local or state lien laws and must cover all work done, labor performed and materials (including equipment and fixtures) furnished for the project.
- 18) Borrower shall cause the Work to begin as soon as practicable after closing but in any event not later than thirty (30) days following the date of this Agreement and completed with ninety (90) days of the date of this Agreement. The Work shall be performed with reasonable diligence; therefore, the Work is never to cease for more than 30 consecutive days. Should Borrower fail to comply with these terms, LENDER may refuse to make any further payments under this Agreement. Any funds remaining in the Escrow Funds account shall then be applied as prepayment to a principal reduction of the Note.
- 19) In the event any Stop Work Notices, Notices to Withhold, Mechanic's Liens or other claims of lien are filed against the Property, LENDER, after five (5) days' notice to the undersigned of its intention to do so, may, in its sole discretion, pay any or all of such liens or claims, may contest the validity of any of them, paying all costs and expenses of contesting same and/or may cease making payments hereunder and make a principal reduction payment with the Escrow Funds. If the Escrow Funds are used to make such a principal

