

# 203 (k) Borrower's Acknowledgement

U.S. Department of Housing and Urban Development  
Office of Housing  
Federal Housing Commissioner

**Condition of Property:** I understand that the property I am purchasing is not HUD approved and HUD does not warrant the condition or the value of the property. I understand the HUD plan review (where performed) and the appraisal are performed to determine compliance with the required architectural

exhibits and to estimate the value of the property, but neither guarantees the house is free of defects. I understand I was responsible to have an independent consultant and/or a professional home inspection service perform an inspection of the property and the cost of the inspection was (or could be ) included in the mortgage.

## Loan Requirements

• I understand at the time of the loan closing of an FHA-insured 203(k) Rehabilitation Loan, for which I have applied to my lender, the proceeds designated for the rehabilitation or improvement (including a contingency reserve, mortgage payments and any other fees, where applicable) are to be placed in an interest bearing escrow account. The Rehabilitation Escrow Account is not, nor will it be treated as an escrow for the paying of real estate taxes, insurance premiums, delinquent notes, ground rents or assessments. I hereby request the lender, after the Final Release Notice is issued, to:

- Pay the net interest income directly to me/us.
- Apply the net interest income directly to the mortgage principal balance for an equal amount of principal reduction.
- Other: \_\_\_\_\_

- I understand that the Rehabilitation Escrow Account will cease paying interest to me if (1) the loan payments are delinquent for more than 30 days; or (2) the completion date (or an approved extension) has expired. During this period, the interest will be paid down on the mortgage principal. I understand if I clear up the delinquent or default status and/or the completion date has not expired or an extension has been approved, then the interest on the escrow account will begin again to be paid according to the request above.
- I understand no draws on the escrow account can be made until all permits have been issued by the local or state building departments, where required. I further understand I can only request monies for the actual cost of rehabilitation. If any cost savings result on any line item of the Draw Request, form HUD-9746-A, the amount saved must be used to: (1) Make further improvements to the property; (2) Pay for cost overruns in other line items of the Draw Request; or (3) Prepay the mortgage principal.
- I understand the contractor(s) is responsible to complete the work described in the architectural exhibits in a workmanlike manner. If I agree the work has been properly completed, I will sign the Draw Request, form HUD-9746-A, thereby accepting the responsibility that the completed work is acceptable and payment is justified. I understand there is a 10 percent holdback on each Draw Request to assure the work is properly completed and for lien protection.
- I understand I am responsible to negotiate any and all agreements with the contractor(s) I select and that HUD suggests that the Agreement with the contractor should include a provision for binding arbitration with the American Arbitration Association on any dispute.
- I understand if I am using the Escrow Commitment Procedure, I must sign form HUD-314. The funds deposited in an escrow, trust or special account will not be released until an assumption of the loan occurs by a creditworthy buyer or until the time allowed for such assumption has expired, thereby requiring the funds to be paid down on the mortgage principal.

- I understand if I change a contractor for any reason, I may be obligated under the terms of the original contractor's agreement and I should seek legal advice before taking such action. If I disagree with the contractor regarding the acceptable completion of the work, I can request an inspection by the fee inspector to determine if the work has been properly completed. If an agreement cannot be made with the contractor, the lender may hold the money until such time as an agreement is reached or an arbitrator's decision is rendered.
- I understand the lender or HUD does not provide a one-year warranty on the completed work on the property. I am responsible to obtain such warranty(s) from the contractor(s) and the warranty should be stated in the Homeowner-Contractor Agreement.
- I understand I am responsible to make the mortgage payments during the term of the loan, including the rehabilitation period, to ensure the property will not go into default. The construction on the home must start within 30 days; if the construction ceases for more than 30 days, the lender may consider the loan in default or the lender can use the escrow money to have the work completed. If the work stops or is not progressing as it should, or if the work does not comply with the accepted architectural exhibits, the lender may require additional compliance inspections to protect the security of the loan and I will be responsible to pay for the inspections and the cost of the inspection may be withheld at the next draw request.
- I understand no changes to the architectural exhibits can be made without the acceptance of the lender (or HUD) on form HUD-92577. The contingency fund is set up for changes that affect the health, safety, or items of necessity of the occupants of the property. If the contingency reserve is insufficient, I must place additional monies into the account for payment upon acceptance of the change. Additional improvements can be made after it is determined no further health and safety items exist. A change order will be made to assure the monies are available to the contractor upon completion of the changed work.
- I understand if there are unused contingency funds, mortgage payments, inspection fees or other monies in the Rehabilitation Escrow Account after the Final Release is processed, the lender, in compliance with HUD regulations, *must* apply those funds to prepay the mortgage principal, provided those items are a part of the mortgage.
- I understand the lender may retain the 10 percent holdback, for a period not to exceed 35 days (or the time period required by law to file a lien, whichever is longer), to ensure compliance with state lien waiver laws or other state requirements. Upon completion of the work, I understand I will be provided: (1) The Final Draw Request; (2) The Final Release Notice; and (3) An accounting of the final distribution of all funds.

This statement must be delivered to you prior to closing the loan. Return one copy to your lender as proof you have read the entire document. Keep one copy for your records. You, the borrower(s), must be certain that you understand this information. Sign here only after you have read this entire document. Seek professional advice if you are uncertain.

Borrower's Signature & Date:

X

Co-Borrower's Signature & Date:

X

I, the lender, certify this information was delivered to the borrower(s) prior to the time of loan closing.

Lender's Signature & Date:

X

## APPENDIX 2

## REHABILITATION LOAN AGREEMENT

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, between \_\_\_\_\_ (Borrower) and \_\_\_\_\_ (Lender) to establish the conditions under which the lender will advance proceeds of a loan to be used to purchase and rehabilitate or refinance and rehabilitate the property described below. The property is located in the County of \_\_\_\_\_ State of \_\_\_\_\_ and is described as:

1. The loan will be in the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) to be advanced by Lender to Borrower as provided in this agreement and will be secured by a mortgage or deed of trust ("Mortgage"), which will be a first lien on the property.
2. Payments required under the mortgage or deed of trust 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. The 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; therefore, Borrower agrees to conform to, and to cause improvements to be constructed in conformance with, all requirements of the Commissioner.
4. The Lender will place that portion of the principal amount of the mortgage allocated to rehabilitation (\$ \_\_\_\_\_) in an interest bearing account, trust or escrow for the benefit of the Borrower. The income earned on the interest bearing account will be paid upon issuance of the Final Release Notice or such earlier time as agreeable to the lender.

Lender shall release the escrow funds by check, payable to the Borrower and appropriate payee who performed the work and supplied the materials in connection with this contract. The funds will be released upon completion of the proposed rehabilitation in accordance with the Work Write-up and the Draw Request (Form HUD 9746-A) and the issuance of an acceptable Compliance Inspection Report (Form HUD 92051). The final release of the escrow funds is to take place only after the local jurisdiction has provided its final acceptance of the work.

The lender or HUD may determine that additional compliance inspections are required throughout the rehabilitation period to ensure that the work is progressing in a satisfactory manner. Release of funds is not authorized on this type of inspection, however, the borrower is responsible for paying the inspection fee. The lender may require a property inspection if there have been no draw requests for more than 30 days.

If a Mortgage Payment Reserve is established in the escrow 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.

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5. The principal amount of the loan specified in paragraph 1 contains a contingency reserve. If the contingency reserve or any part thereof is not used, the remaining balance will be applied as a partial prepayment of the loan, if the contingency reserve is part of the mortgage. However, 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. If the borrower, (or other person, organization or agency) put his/her own money into the contingency reserve account, then the borrower can be refunded the money remaining in the account after the issuance of the Final Release Notice.
6. The Borrower will complete all improvements on the property in accordance with the architectural exhibits as accepted by the Lender and/or Commissioner.
7. Changes in the architectural exhibits must be approved in writing by HUD or the Direct Endorsement Underwriter, prior to the beginning of the work. Work must be 100% complete on each change order item before release of any monies.
8. Borrower will 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 will be obtained by the Borrower(s) or his/her contractor.
9. Representatives of the Lender and of 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 to determine the amount of the rehabilitation escrow account to be released by the Lender.
10. Borrower will furnish such records, contracts, bills and other documents relating to the property and the improvements as the Lender or the Commissioner may require.
11. Without prior, written consent of the Lender, no materials, equipment, fixtures or any part of improvements financed with this loan shall 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.
12. The Borrower shall cause either this instrument or the construction contract 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 advance under this agreement, the Lender may require the Borrower to obtain acknowledgement of payment and releases of lien from the contractor and all subcontractors and materialmen dealing directly with the principal contractor. These releases shall cover the period down to the date covered by the last advance, and concurrently with the final payment for the entire project. Such acknowledgements and releases shall be in the form required by local or state lien laws and shall cover all work done, labor performed and materials (including equipment and fixtures) furnished for the project.

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13. Borrower shall cause work to begin within 30 days following the date of this agreement Borrower shall have work completed within \_\_\_\_\_ months following the date of this agreement. Work shall be performed with reasonable diligence; therefore, work is never to cease for more than 30 consecutive days. Should Borrower fail to comply with the terms, the Lender may refuse to make further payments under this agreement. Any funds remaining in the Rehabilitation Escrow Account shall be applied as a prepayment to the mortgage.
14. In the event any Stop Notices, Notices to Withhold, Mechanic's liens, or claims of lien are filed against the property, the Lender, after five (5) days' notice to the undersigned of its intention to do so, may pay any or all of such liens or claims, or may contest the validity of any of them, paying all costs and expenses of contesting the same.
15. Failure of the Borrower to perform under the terms of this Rehabilitation Loan Agreement shall make the loan amount, at the option of the lender, due and payable.
16. The mortgagor acknowledges receipt of the accepted architectural exhibits that are incorporated into this agreement, which copies are maintained by the lender and in the HUD Field Office.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature(s) of Mortgagor(s)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Mortgagee

\_\_\_\_\_  
Title

## RENOVATION LOAN BORROWER'S DISCLOSURE

Borrower(s): \_\_\_\_\_ Loan Number: \_\_\_\_\_

Property Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Lender: \_\_\_\_\_

Borrower hereby warrants and represents (which warranties, covenants, agreements and representations shall survive the making of any and all advances) to the "Lender", its agents, successors and/or assigns (hereinafter collectively called "Lender") as follows:

Borrower acknowledges that Borrower will select and investigate or has selected and investigated the background, experience and reputation of any and all contractors (hereinafter referred to as "Contractors") who will furnish labor, material or other services for the construction of said improvements and that Lender has, and shall have, no responsibility or liability whatsoever for such persons or for the quality of their materials or workmanship.

Borrower acknowledges that Lender has the right to verify the acceptability of Borrower's selection of any or all Contractors in accordance with the guidelines set forth by the Department of Housing and Urban Development (hereinafter referred to as "HUD"), USDA, or Fannie Mae and, additionally, Lender has the right to disallow any or all Contractors that do not meet the guidelines for Contractors as set out by HUD, USDA, FNMA or Lender.

Borrower understands that this acknowledgment is made for the purpose of inducing the Lender to advance the money pursuant to the terms of the Loan documents, and the Lender is relying upon the acknowledgment in advancing such loan proceeds. Further, Borrower agrees to indemnify and hold Lender, its agents, successors and/or assigns, harmless against costs, damages, attorney's fees, expenses and liabilities which it may incur or sustain in connection with the incorrectness of any of these representations or any court action arising therefrom and will pay the same upon demand. Borrower further agrees to indemnify and hold Lender, its agents, successors and/or assigns, harmless from any claims by or against the Contractor or any subcontractors or material suppliers for any and all reasons.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Borrower's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Co-Borrower's Signature

\_\_\_\_\_  
Date

# Borrower's Identity-of-Interest Certification

Borrower's Name(s):	
Property Address:	
Telephone Number: Work: Home:	FHA Case No.:

"I hereby certify to the Department of Housing and Urban Development (HUD) and

(lender), that I/We do not have an identity-of-interest with the seller of the property. I also Certify that I/We do not have a conflict-of-interest with any other party to the transaction, including the realtor, lender, contractor, consultant and/or the appraiser. In addition, I certify that I am not obtaining any source of funds or acting as a "strawbuyer" for another individual, partnership, company or investment club and I/We  will  will not occupy the residence I/We are purchasing or refinancing."

**Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802).**

Borrower	Date: _____
Borrower	Date: _____
Borrower	Date: _____
Borrower	Date: _____

## **203k Streamline Draw Information**

Payment of the repairs made to contractor(s)/Home Improvement Stores for the 203k Streamline program will be made in a maximum of two draws. The draw processes will work as follows:

- **The first 50%** of all bids worked into the 203k program will be dispersed at closing. (Work performed on property must start within 30 days of closing/funding of the loan.)
- The second half or 50% of the remaining balance will be released upon completion and **inspection of ALL work** to be completed by each contractor(s)/Home Improvement store performing work on the subject property. Each individual contractor/Home Improvement Store will NOT be paid upon completion of just their individual work unless they are the only contractor/Home Improvement performing work on the subject property. (All work must be completed within 6 months of closing/funding of loan.)

The second half or 50% of funds not dispersed in the first draw will be held in an escrow account until the final funds are paid to all applicable parties. Checks will be made payable to both the borrower(s) and the contractor(s) for each bid (the second draw for Home Improvement stores will be paid to the borrower if borrower shows receipt for proof of payment). This protects both borrower and contractor to ensure work is completed and contractor is paid. The second draw can take up to 12-14 weeks from closing/funding of the loan to be available for payout. If work has been completed more quickly this may cause a delay in the final funds being dispersed.

The contingency fund is a reserve to cover unexpected or unplanned repairs for health and safety issues. This may not be used towards material changes or repairs.

Once the final balance of funds have been released, any amounts remaining in the Repair Account will be applied toward the balance of the loan. This includes any unused contingency funds or inspection fees remaining in the Repair Account.

**All borrower(s) and contractor(s) must understand the payment method of work to be performed.**

*There are no exceptions to the draw process listed above.*

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Borrower

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Loan Officer

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Borrower

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Contractor

**FHA STREAMLINED 203(k) LIMITED REPAIR LOAN PROGRAM  
BORROWER'S DISCLOSURE**

Borrower(s): \_\_\_\_\_

Property Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Lender: \_\_\_\_\_

Borrower hereby warrants and represents (which warranties, covenants, agreements and representations shall survive the making of any and all advances) to Lender, its agents, successors and/or assigns (hereinafter collectively called "Lender") as follows:

Borrower acknowledges that Borrower will select and investigate or has selected and investigated the background, experience and reputation of any and all contractors (hereinafter referred to as "Contractors") who will furnish labor, material or other services for the construction of said improvements and that Lender has, and shall have, no responsibility or liability whatever for such persons or for the quality of their materials or workmanship.

Borrower acknowledges that Lender has the right to verify the acceptability of Borrower's selection of any or all Contractors in accordance with the guidelines set forth by the Department of Housing and Urban Development (hereinafter referred to as "HUD") and, additionally, Lender has the right to disallow any or all Contractors that do not meet the guidelines for Contractors as set out by HUD.

Borrower understands that these statements and acknowledgments are made for the purpose of inducing the Lender to advance the money pursuant to the terms of the Loan documents, and the Lender is relying upon the truth and accuracy of the statements made in advancing such loan proceeds. Further, Borrower agrees to indemnify and save Lender, its agents, successors and/or assigns, harmless against costs, damages, attorney's fees, expenses and liabilities which it may incur or sustain in connection with the incorrectness of any of these representations or any court action arising therefrom and will pay the same upon demand. Borrower further agrees to indemnify and save Lender, its agents, successors and/or assigns, harmless from any claims by or against the Contractor or any subcontractors or material suppliers.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Borrower's Signature

\_\_\_\_\_  
Date Co-Borrower's Signature

\_\_\_\_\_  
Date



## **Disclosure Statement Required by Texas Code § 53.255.**

**KNOW YOUR RIGHTS AND RESPONSIBILITIES UNDER THE LAW.** You are about to enter into a transaction to build a new home or remodel existing residential property. Texas law requires your contractor to provide you with this brief overview of some of your rights, responsibilities, and risks in this transaction.

**CONVEYANCE TO CONTRACTOR NOT REQUIRED.** Your contractor may not require you to convey your real property to your contractor as a condition to the agreement for the construction of improvements on your property.

**KNOW YOUR CONTRACTOR.** Before you enter into your agreement for the construction of improvements to your real property, make sure that you have investigated your contractor. Obtain and verify references from other people who have used the contractor for the type and size of construction project on your property.

**GET IT IN WRITING.** Make sure that you have a written agreement with your contractor that includes: (1) a description of the work the contractor is to perform; (2) the required or estimated time for completion of the work; (3) the cost of the work or how the cost will be determined; and (4) the procedure and method of payment, including provisions for statutory retainage and conditions for final payment. If your contractor made a promise, warranty, or representation to you concerning the work the contractor is to perform, make sure that promise, warranty, or representation is specified in the written agreement. An oral promise that is not included in the written agreement may not be enforceable under Texas law.

**READ BEFORE YOU SIGN.** Do not sign any document before you have read and understood it.

**NEVER SIGN A DOCUMENT THAT INCLUDES AN UNTRUE STATEMENT.** Take your time in reviewing documents. If you borrow money from a lender to pay for the improvements, you are entitled to have the loan closing documents furnished to you for review at least one business day before the closing. Do not waive this requirement unless a bona fide emergency or another good cause exists, and make sure you understand the documents before you sign them. If you fail to comply with the terms of the documents, you could lose your property. You are entitled to have your own attorney review any documents. If you have any question about the meaning of a document, consult an attorney.

**GET A LIST OF SUBCONTRACTORS AND SUPPLIERS.** Before construction commences, your contractor is required to provide you with a list of the subcontractors and suppliers the contractor intends to use on your project. Your contractor is required to supply updated information on any subcontractors and suppliers added after the list is provided. Your contractor is not required to supply this information if you sign a written waiver of your rights to receive this information.

**MONITOR THE WORK.** Lenders and governmental authorities may inspect the work in progress from time to time for their own purposes. These inspections are not intended as quality

control inspections. Quality control is a matter for you and your contractor. To ensure that your home is being constructed in accordance with your wishes and specifications, you should inspect the work yourself or have your own independent inspector review the work in progress.

**MONITOR PAYMENTS.** If you use a lender, your lender is required to provide you with a periodic statement showing the money disbursed by the lender from the proceeds of your loan. Each time your contractor requests payment from you or your lender for work performed, your contractor is also required to furnish you with a disbursement statement that lists the name and address of each subcontractor or supplier that the contractor intends to pay from the requested funds. Review these statements and make sure that the money is being properly disbursed.

**CLAIMS BY SUBCONTRACTORS AND SUPPLIERS.** Under Texas law, if a subcontractor or supplier who furnishes labor or materials for the construction of improvements on your property is not paid, you may become liable and your property may be subject to a lien for the unpaid amount, even if you have not contracted directly with the subcontractor or supplier. To avoid liability, you should take the following actions:

(1) If you receive a written notice from a subcontractor or supplier, you should withhold payment from your contractor for the amount of the claim stated in the notice until the dispute between your contractor and the subcontractor or supplier is resolved. If your lender is disbursing money directly to your contractor, you should immediately provide a copy of the notice to your lender and instruct the lender to withhold payment in the amount of the claim stated in the notice. If you continue to pay the contractor after receiving the written notice without withholding the amount of the claim, you may be liable and your property may be subject to a lien for the amount you failed to withhold.

(2) During construction and for 30 days after final completion, termination, or abandonment of the contract by the contractor, you should withhold or cause your lender to withhold 10 percent of the amount of payments made for the work performed by your contractor. This is sometimes referred to as 'statutory retainage.' If you choose not to withhold the 10 percent for at least 30 days after final completion, termination, or abandonment of the contract by the contractor and if a valid claim is timely made by a claimant and your contractor fails to pay the claim, you may be personally liable and your property may be subject to a lien up to the amount that you failed to withhold.

If a claim is not paid within a certain time period, the claimant is required to file a mechanic's lien affidavit in the real property records in the county where the property is located. A mechanic's lien affidavit is not a lien on your property, but the filing of the affidavit could result in a court imposing a lien on your property if the claimant is successful in litigation to enforce the lien claim.

**SOME CLAIMS MAY NOT BE VALID.** When you receive a written notice of a claim or when a mechanic's lien affidavit is filed on your property, you should know your legal rights and responsibilities regarding the claim. Not all claims are valid. A notice of a claim by a subcontractor or supplier is required to be sent, and the mechanic's lien affidavit is required to be filed, within strict time periods. The notice and the affidavit must contain certain information.

All claimants may not fully comply with the legal requirements to collect on a claim. If you have paid the contractor in full before receiving a notice of a claim and have fully complied with the law regarding statutory retainage, you may not be liable for that claim. Accordingly, you should consult your attorney when you receive a written notice of a claim to determine the true extent of your liability or potential liability for that claim.

**OBTAIN A LIEN RELEASE AND A BILLS-PAID AFFIDAVIT.** When you receive a notice of claim, do not release withheld funds without obtaining a signed and notarized release of lien and claim from the claimant. You can also reduce the risk of having a claim filed by a subcontractor or supplier by requiring as a condition of each payment made by you or your lender that your contractor furnish you with an affidavit stating that all bills have been paid. Under Texas law, on final completion of the work and before final payment, the contractor is required to furnish you with an affidavit stating that all bills have been paid. If the contractor discloses any unpaid bill in the affidavit, you should withhold payment in the amount of the unpaid bill until you receive a waiver of lien or release from that subcontractor or supplier.

**OBTAIN TITLE INSURANCE PROTECTION.** You may be able to obtain a title insurance policy to insure that the title to your property and the existing improvements on your property are free from liens claimed by subcontractors and suppliers. If your policy is issued before the improvements are completed and covers the value of the improvements to be completed, you should obtain, on the completion of the improvements and as a condition of your final payment, a 'completion of improvements' policy endorsement. This endorsement will protect your property from liens claimed by subcontractors and suppliers that may arise from the date the original title policy is issued to the date of the endorsement."