

THIS IS A MODEL DOCUMENT FOR USE IN FANNIE MAE CONSTRUCTION LOAN TRANSACTIONS. THIS FORM IS PROVIDED AS AN EXAMPLE AND HAS NOT BEEN EVALUATED FOR VALIDITY AND ENFORCEABILITY IN ANY JURISDICTION. LENDERS SHOULD CONSULT WITH LEGAL COUNSEL TO ENSURE THAT ALL FORMS USED TO ORIGINATE LOANS ARE APPROPRIATE, AND THAT ALL LEGAL INSTRUMENTS ARE COMPLETED CORRECTLY AND IN COMPLIANCE WITH APPLICABLE LAW.

CONSTRUCTION LOAN AGREEMENT

THIS CONSTRUCTION LOAN AGREEMENT (“Loan Agreement”) dated _____, _____, is made by and between: _____ (“Borrower”, “I”, “me” or “my”), and _____ a _____ having a principal place of business at _____ (“Lender”).

1. ABOUT THIS LOAN AGREEMENT

1.1. Lender’s Loan to Me. I have signed a Promissory Note payable to Lender (“Note”). The Note is for the loan by Lender to me in the principal amount of \$ _____ (“Loan”). The purpose of the Loan is:

Check applicable box:

- to purchase the real property described in Exhibit “A” to this Loan Agreement (“Property”)
- to pay in full any outstanding liens on the Property

and to pay for labor and materials to complete certain improvements (“Improvements”) on the Property (“Work”).

“Property” includes the Improvements. I also have executed a Mortgage or Deed of Trust (“Security Instrument”) granting Lender a first priority lien on the Property. In this Loan Agreement, “Loan Documents” means the Note, the Security Instrument, and this Loan Agreement. All terms defined in the Note and the Security Instrument have the same meaning in this Loan Agreement.

2. MY AGREEMENTS

2.1. The Work.

2.1.1. My Contractor. I have entered into a written agreement (“Construction Contract”) with _____ with offices at _____ (“Contractor”) for all the Work. The Construction Contract states the total amount that I will pay Contractor for the Work (“Contract Price”), and includes: (i) the blueprints, shop drawings, plans, and specifications for the Work (“Plans”); (ii) a written itemization of the Work and the Contract Price; and (iii) an itemized description of each segment of the Work that sets the timetable for completing the Work, and the corresponding payments for the Work (“Work and Payment Schedule”). I have provided to the Lender a copy of the Construction Contract. The Construction Contract comprises the entire agreement between the Contractor and me regarding the Work. The Contractor will give Lender the name, address, and telephone number of each person that has a contract with Contractor to supply

materials or labor for the Work (each, a “Supplier”). I acknowledge that I am authorized to provide the Contractor with a copy of this Loan Agreement.

- 2.1.2. Permits.** I will get, and keep in force, all approvals of the Work (each, a “Permit”) that are required by any federal, state, county, or local government agency (each, a “Government Authority”). I will comply with all applicable laws of any Government Authority (“Government Regulations”). Contractor will have any license required by any Government Authority. I will obtain from Contractor and provide to Lender copies of all licenses and Permits required by Government Authorities.
- 2.1.3. Change Orders.** Any material change in the Contract Price, the Work, or the Work and Payment Schedule must be in a written agreement signed by me and Contractor and approved by Lender (“Change Order”).
- 2.1.4. Care of the Property.** If Lender requests, I will provide Lender with a certified report that the Property is free of wood-boring insects. I will comply with all of the reasonable recommendations of any engineer making a report for the Property. I will notify Lender promptly of any fire or other casualty relating to the Property or the Work.
- 2.1.5. Completing the Work.** I will cause the Contractor to begin the Work promptly after the loan closing and all permits are in place. I will use my best efforts to ensure the Contractor continues the Work diligently according to the Schedule and in a commercially reasonable and workmanlike manner in strict accordance with the Construction Contract and all Government Regulations. The Work will not violate any of the conditions, covenants, or restrictions on the Property.

I will notify Lender promptly in writing if: (i) I think that the Work does not comply with the Construction Contract or this Loan Agreement; (ii) any notice of lien on the Property is served on me or Contractor; or (iii) any Government Authority issues any notice or claim relating to the Property.

I acknowledge that the Construction Contract represents that the Work will be completed on or before _____ (“Completion Date”), subject to modifications in approved Change Orders. I agree that the Work must be completed no later than twelve (12) months after the loan closing (“Completion Deadline”), and no later than eighteen (18) months after the loan closing if Lender agrees in writing to extend the Completion Deadline. I may request that Lender extend the Completion Deadline only if (i) I am not in default under any of the Loan Documents or the Construction Contract, and (ii) the construction cannot be completed on time because extenuating circumstances exist that are beyond my control. Lender will accept the Work as completed when I satisfy all of the conditions in Section 2.8.4.5 of this Loan Agreement. I acknowledge and agree that if the Work is not completed by the Completion Deadline, it will constitute an Event of Default under Section 3.1 of this Loan Agreement.

- 2.1.6. Inspections.** Lender and those acting on Lender’s behalf have the right to enter the Property to inspect the Work, without notice to me, during normal business hours, or any other times that Lender arranges with me. I will pay for all inspections performed at the request of Lender or any Government Authority, at the prevailing rate.

Lender inspections are for Lender’s benefit only. Lender’s inspections create no liability or responsibility to me, Contractor, any Suppliers, or any third parties. Lender is not obligated to inspect the Property or the Work. I acknowledge and

agree that if Lender or its designee are unreasonably denied entry to the Property to inspect the Work, it will constitute an Event of Default under Section 3.1 of this Loan Agreement.

2.1.7. I Am Responsible for the Work. I agree that the Work must be completed according to the Construction Contract, including the Plans, subject to Change Orders. I have full and sole responsibility to make sure that the Work complies with the Construction Contract and all Government Regulations, and that the Work is completed no later than the Completion Deadline. I acknowledge and agree that if the Work is not completed according to the Construction Contract (including any modification by Change Order), it will constitute an Event of Default under Section 3.1 of this Loan Agreement.

Lender has no liability, obligation, or responsibility for the Work. Lender is not liable for any failure to construct, complete, protect, or insure the Work. Lender is not liable for any costs of the Work. Nothing Lender does (including inspecting the Work or disbursing any part of the Loan) will be a representation or warranty by Lender that the Work complies with the Construction Contract, this Loan Agreement, the Permits, or any Government Regulations. If Lender asks, I will repair or replace at my expense any Work that does not comply with the Plans. I have no right to assert or claim any offset, counterclaim, or defense against Lender because of any claim I may have against Contractor or any Suppliers.

2.2. Costs and Expenses. I will pay all costs and expenses required to satisfy the conditions of this Loan Agreement, including any Change Orders.

2.3. No Other Financing. Until paid in full, the Loan will be my only financing for the Property and the Work.

2.4. Title Insurance. I will get and keep in force a mortgagee's or lender's policy of title insurance ("Title Policy"). The Title Policy will insure (i) that the total amount of the lien of Lender's Security Instrument is a valid first priority lien on my interest in the Property, and (ii) that the title to my interest in the Property is free and clear of all defects and encumbrances except those Lender approves in writing.

At or prior to the closing of the Loan, I will provide Lender with the commitment of the issuer of the Title Policy ("Title Company") to issue the Title Policy ("Title Commitment"). When the Work is completed, I will provide Lender with endorsements to the Title Policy insuring Lender to the full amount of the Loan disbursed.

2.5. Survey. If Lender requests, I will provide and certify to Lender and to the Title Company a survey of the Property and the Improvements, including dimensions and locations of all completed Improvements and all easements or other rights or restrictions (each, a "Survey"). Each Survey must be satisfactory to Lender and to the Title Company.

2.6. Appraisal. Lender will obtain at my expense an appraisal of the Property and the Improvements before Lender disburses any part of the Loan. The appraisal will show the value of the Property and the Improvements, using the property value estimate method. Lender will choose the appraiser. Each appraisal will reflect an appraised value and be in form and substance satisfactory to Lender.

2.7. Hazard Insurance.

2.7.1. The Contractor's Insurance. The Contractor must get and keep in force the following insurance policies ("Contractor's Insurance"): (i) a builder's all risk insurance policy (with a mortgagee's loss payable clause in favor of Lender and

with a physical loss form endorsement), without co-insurance, in an amount not less than one hundred percent (100%) of the replacement cost of the Improvements, with the standard conditions; (ii) public liability insurance with limits of liability equal to at least \$500,000 per occurrence; (iii) workers' compensation insurance as required by applicable state law; (iv) automobile liability insurance with limits of liability equal to at least \$300,000 per occurrence for each vehicle that will be used in providing the services hereunder; and (v) other insurance as is appropriate for the Work being performed. The Contractor's Insurance will be in force until I accept the Improvements.

2.7.2. My Insurance. I will get and keep in force a standard hazard insurance policy as required by the Security Instrument. This insurance will be effective when the Contractor's Insurance terminates.

2.8. The Loan.

2.8.1. Administration. Lender will disburse the Loan proceeds ("Loan Proceeds") on the date the Loan closes ("Closing Date"), in escrow, to a federally insured interest bearing account ("Escrow Account" or "Account"), to be disbursed by Lender, or Lender's escrow agent, in accordance with this Loan Agreement, unless prohibited by applicable law.

2.8.2. Use of the Loan Funds.

2.8.2.1. Disbursements. "Disbursement" means Lender's disbursement of any part of the Loan under this Loan Agreement, or my endorsement and delivery of any Loan Proceeds check to Contractor or a Supplier.

2.8.2.2. Loan Commitment Amount. As of the Closing Date, Lender commits to disburse Loan principal in the total amount of the Loan ("Loan Commitment Amount"). After the Closing Date, the Loan Commitment Amount will equal the principal amount of the Loan less the total amount of Disbursements made to date. Any Loan Commitment Amount that remains after all Disbursements have been made will be credited as a partial prepayment of the principal amount of the Loan at the time of the final Disbursement.

2.8.2.3. No Changes. Unless Lender agrees in writing first, I will not change the Plans or the Construction Contract, or permit any part of any Disbursement to be paid, except as specified in a Request for Disbursement.

2.8.2.4. Trust Fund. I will receive all Disbursements in trust. I will apply the Disbursements first to the payment of the cost of the Work before using any part for any other purpose.

2.8.3. The Escrow Account. If the Loan will be disbursed from an Escrow Account, all interest on the Account will be paid to me. If Lender is a depository institution that offers Escrow Accounts, the Account must be with Lender.

2.8.4. Disbursements; Conditions To Disbursements. Each of the promises I make in this Loan Agreement will be considered made again as of the time (i) Lender, or Lender's escrow agent, receives any request from me and Contractor for a Disbursement ("Request for Disbursement"), or (ii) I endorse any Loan Proceeds check to Contractor or a Supplier. Lender will hold ten (10%) percent of each

Disbursement for the Work (“Holdback”). Lender will disburse Holdback only as part of the final Disbursement.

2.8.4.1. Plans Approved. I have reviewed the Plans; the Plans are satisfactory and have been approved by all Government Authorities having jurisdiction over the Property and the Work.

2.8.4.2. Work Completed; Invoices and Lien Waivers. The Work for which a Disbursement is requested has been completed in a good and workmanlike manner, and complies with the Construction Contract, the Plans, the Permits, and all Government Regulations.

2.8.4.3. My Financial Condition; No Defaults. There is no material adverse change in my financial condition or employment status since the time I applied for the Loan. I am not in default under any of the Loan Documents or the Construction Contract. I have complied completely with all of my promises about the Work (including the promises in Section 2.1.5 of this Loan Agreement).

2.8.4.4. Request for Disbursement. If the Loan will be disbursed from an Escrow Account, or directly by Lender, Contractor will deliver to Lender or Lender’s escrow agent: (i) a Request for Disbursement, properly completed, and signed by me and the Contractor; (ii) the invoices for the Work; (iii) unconditional lien waivers from Contractor and from Suppliers for all Work covered by the Request for Disbursement; and (iv) all other required information described in the Request for Disbursement. Lender may rely on my statements and Contractor’s statements in the Request for Disbursement and on the invoices and lien waivers submitted by Contractor. Lender does not have to verify any of that information. The funds obtained with the Request for Disbursement will be used to pay for the Work described in the Request for Disbursement.

2.8.4.5. Completion of Improvements. The Work will be completed as required by this Loan Agreement.

I acknowledge that before the final Disbursement, Lender must obtain a certification of completion stating the Work was completed in accordance with the Plans (“Certification of Completion”), and the final, unconditional certificate of occupancy issued by the responsible Government Authority, if required by law. I acknowledge and agree that if Lender or its designee are unreasonably denied entry to the Property to inspect the Work in order to obtain a Certification of Completion, it will constitute an Event of Default under Section 3.1 of this Loan Agreement.

3. DEFAULT AND REMEDIES

3.1. Events of Default. I will be in default under this Loan Agreement and the other Loan Documents if any of the following events (“Events of Default”) occurs:

3.1.1. Nonpayment. I fail to make any payment due under any Loan Document;

3.1.2. Other Broken Promises. I fail to keep any promise or to perform any obligation in this Loan Agreement or any other Loan Document; or

- 3.1.3. False Statements.** Any statement of fact, representation, or warranty I make to Lender in my loan application, this Loan Agreement, or in any other Loan Document is false, inaccurate, or incomplete.
- 3.2. Lender's Rights and Remedies.** Subject to my right to notice of default and right to cure the default(s), to the extent required by law, if an Event of Default occurs, Lender has the following rights and remedies ("Rights and Remedies"), subject to applicable law:
- 3.2.1. Declare a Default.** Lender may declare the Note, the Security Instrument, or both, in default.
- 3.2.2. Finish the Improvements and Protect the Property.** Subject to this Loan Agreement and applicable law, Lender may take possession of the Property. Lender may do every act and thing I or any subsequent owner of the Property might or could do for the protection, construction, repair, operation, maintenance, and leasing of the Property.
- I authorize Lender, as my attorney-in-fact, to exercise any right I may have in or under the Construction Contract or any Permit. I irrevocably authorize and direct each party to any Permits and Construction Contracts to provide Lender the benefits of the Permits and the Construction Contracts upon Lender's written notice. I agree that any such party will have the right to rely upon any written notice from Lender without any obligation or right to inquire as to whether an Event of Default actually exists and notwithstanding any notice from me or claim by me to the contrary. I will have no right or claim against any such party for any benefit provided to Lender by such party. If I cure the Event of Default, or if Lender reinstates the Loan in good standing, Lender will give written notice of reinstatement to each such party and authorize each such party to render such benefits to me.
- 3.2.3. Take the Escrow Account.** Subject to this Loan Agreement and applicable law, Lender may take any funds in the Escrow Account, if any, to apply to any amounts I owe under the Loan Documents.
- 3.2.4. Indemnity.** I will indemnify and hold Lender and Lender's affiliates, and the officers, directors, employees, and agents of Lender and its affiliates ("Indemnified Parties"), harmless from any liability, claim, loss, cost, legal expenses (including suits, claims, proceedings, damages, and costs arising from or relating to any third-party claim), incurred by or alleged against any of the Indemnified Parties arising from or related to: (i) the Property; (ii) the Work; or (iii) my default under this Loan Agreement.
- 3.2.5. Lender's Fees, Costs, and Expenses.** I will pay to Lender all attorney's fees, costs, and other expenses paid or incurred by Lender in enforcing or exercising Lender's Rights and Remedies under this Loan Agreement. Interest will accrue on these amounts at the Note rate from the date the expense is disbursed by Lender and shall be payable, with such interest, upon notice from Lender requesting payment. The expense plus interest will become additional debt secured by the Security Instrument.
- 3.2.6. Remedies Cumulative.** Lender may (but is not required to) exercise any or all of the rights under this Loan Agreement. All of Lender's Rights and Remedies contained in this Loan Agreement are cumulative and are in addition to any other Rights and Remedies created in any other Loan Document or existing at law or in equity.

4. GENERAL

- 4.1. My Cooperation.** Lender may require that I sign other instruments or documents or supply additional information and data to Lender that it considers necessary to accomplish the purposes of this Loan Agreement. I will sign such documents or provide such information at my own cost and expense. All documents delivered to Lender by me will become Lender's property.
- 4.2. Credit Information.** I will provide Lender with updated financial or credit information upon Lender's reasonable request and notice. Subject to applicable law, Lender may obtain consumer reports from consumer reporting agencies as part of reviewing my Loan.
- 4.3. No Waivers.** Lender may choose to delay enforcing any of Lender's rights or waive any of Lender's rights under this Loan Agreement. Lender may delay enforcing or waive any of Lender's rights without affecting Lender's other rights. If Lender waives a right, Lender can still enforce the same right later.
- 4.4. Entire Agreement.** This Loan Agreement and the other Loan Documents are the entire understanding between Lender and me about the Loan, the Improvements, and the Work, and may not be modified, amended, or terminated except by written agreement signed by Lender and me.
- 4.5. Binding Agreement; Assignment.** This Loan Agreement is for the benefit of Lender and Lender's successors and assigns, and binds me, my heirs, executors, administrators, successors, and assigns. I may not assign this Loan Agreement without Lender's prior written consent, which Lender may withhold in Lender's sole discretion.
- 4.6. Survival of Representations.** Any promise I make will survive the termination of this Loan Agreement.
- 4.7. Joint and Several Liability.** Each person executing this Loan Agreement as a Borrower has joint and several liability.
- 4.8. Notices.** Any communication required by this Loan Agreement will be in writing and addressed to the addressee at the address indicated on the first page of this Loan Agreement.
- 4.9. No Third-Party Beneficiary.** This Loan Agreement is for the sole benefit of Lender and me and is not for the benefit of anyone else. All conditions to Lender's obligation to make any Disbursement are solely for Lender's benefit. No other person or entity will have standing to require satisfaction of those conditions or be deemed to be the beneficiary of those conditions.
- 4.10. Governing Law.** This Loan Agreement is entered into in the state where the Property is located (the "State") and will be controlled and interpreted by the laws of the United States and the State.
- 4.11. Exhibits.** The following exhibits are attached to and a part of this Loan Agreement.
- Exhibit "A" - Description of the Property
 - Exhibit "B" - Work and Payment Schedule
 - Exhibit "C" - Request for Disbursement

IN WITNESS WHEREOF, Borrower and Lender have executed this Loan Agreement as of the date first set forth on page one.

LENDER:

[LENDER] _____ BY: _____

NAME: _____ ITS: _____

(SEAL)

Borrower #1

Printed Name

Witness

(SEAL)

Borrower #2

Printed Name

Witness

(SEAL)

Borrower #3

Printed Name

Witness

(SEAL)

Borrower #4

Printed Name

Witness

STATE OF _____)

_____) ss.:

COUNTY OF _____)

On this _____ day of _____, _____, before me the subscriber personally appeared _____ (and) _____ to me known and known to me to be the same person(s) described in and who executed the foregoing instrument, and (s)he/they duly (jointly and severally) acknowledged to me that (s)he/they executed the same.

Notary Signature

Notary Printed Name

Notary Public; State of _____

Qualified in the County of _____

My commission expires: _____

Official Seal:

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B
WORK AND PAYMENT SCHEDULE

EXHIBIT C
REQUEST FOR DISBURSEMENT

TO: _____
(Disbursing Agent)

RE:

Borrower, Property & Contractor Information:

Loan Disbursement Information:

By signing below, Borrower and Contractor represent and agree that:

- (i.) They have reviewed the Plans; the Plans are satisfactory and have been approved by all Governmental Authorities having jurisdiction over the Property and the Work;
- (ii.) The Improvements do not violate any of the conditions, covenants, or restrictions on the Property;
- (iii.) There are no defaults under the terms of the Loan Agreement, any other Loan Document, or under the Construction Contract;
- (iv.) The Work for which this Request for Disbursement is made has been duly completed in a good and workmanlike manner, in accordance with the Plans and in compliance with all Governmental Regulations;
- (v.) The Loan Commitment Amount remaining will be sufficient to complete all Improvements contemplated by the Loan Agreement or the Plans or the Construction Contract;
- (vi.) Lender has received invoices, and unconditional construction lien releases from the General Contractor, and each Supplier for all Work covered by this Request for Disbursement, and for all Requests for Disbursement previously submitted;
- (vii.) The funds obtained with the Request for Disbursement will be used to pay in full the costs of labor performed or materials supplied as requested in this Request for Disbursement;
- (viii.) There has been no material adverse change in Borrower's financial condition or employment status since the time Borrower applied for the Loans.

By signing below Borrower and Contractor request Lender to pay the following payee(s) in the following amount(s):

_____ in the amount of \$ _____
_____ in the amount of \$ _____
_____ in the amount of \$ _____
_____ in the amount of \$ _____
_____ in the amount of \$ _____
_____ in the amount of \$ _____

_____ By: _____

Contractor

Authorized Signature

Date

Its: _____
Title

Borrower's Signature

Date

By signing below the authorized [LENDER] representative named below approves the disbursement requested in this Request for Disbursement but, to the extent permitted by applicable law, makes no warranty or representation as to the quality of work completed and/or materials delivered thus far.

[LENDER] ("Lender")

By: _____
Authorized Representative

Date