

Building Loan Agreement

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

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The Department of Housing and Urban Development (HUD) is authorized to collect this information by provisions set forth in Article I.E of the National Housing Act (Public Law 479, 48 Stat. 1246, 12 U.S.C. 1701 et. seq.) This information is provided to the FHA-Commissioner to obtain approval by contractors, mortgagors and mortgagees for changes in the drawings and specifications or any terms of the contract documents, or order for extra work, or changes by altering or adding to the work, or which will change the design concept. The information is used by HUD to ensure that viable projects are developed. Furnishing of this information is mandatory, and failure to provide it may result in your not receiving your benefits.

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This Agreement, made the _____ day of _____, by and between

_____ ,
a corporation organized and existing under the laws of _____,

with an office and place of business in _____, County of _____,

and State of _____ (hereinafter called the "Borrower"), and

_____ , a corporation organized

and existing under the laws of _____, having an office and place of business in

_____ , County of _____,

and State of _____ (hereinafter called the "Lender").

Whereas, the Borrower as the owner in fee simple of, or the owner of the leasehold estate in, the property described in Exhibit "A", attached hereto and made a part hereof, has applied to the Lender for a mortgage loan of _____

_____ Dollars (\$))
to aid the Borrower in the construction on said property of a project (identified as HUD Project No. _____) in accordance with Drawings and Specifications hereinafter referred to; and

Whereas, The Borrower understands that the Lender has received a commitment from the Federal Housing Commissioner (hereinafter called the "Commissioner") for insurance of said loan under the provisions of the National Housing Act and intends upon execution of the hereinafter-mentioned Note and Mortgage to have said Note endorsed for insurance by the Commissioner.

Now, Therefore, in consideration of the mutual promises hereinafter set out and of other valuable considerations, the undersigned agree as follows:

(1) The Lender shall make and the Borrower shall take a building loan in the principal sum of _____ Dollars (\$)), to be advanced as hereinafter provided, and to bear interest from the date of each advance at the rate of _____ percent (%) per annum. Said loans shall be evidenced by a credit instrument (hereinafter called the "Note") dated

(mm/dd/yyyy) _____, shall be payable in monthly installments, and shall have a maturity date of (Mm/dd/yyyy) _____. Said Note shall be executed by the Borrower and payable to the Lender, or order, and shall be secured by a _____

(hereinafter called the "Mortgage"), of even date, on the property described in Exhibit "A". The Mortgage shall constitute a valid first lien on said property and the improvements to be erected thereon, and the only lien thereon except for liens for taxes and assessments not yet payable and other liens acceptable to the Lender and the Commissioner.

(2) The Borrower shall complete on the aforesaid property, by _____, a project in accordance with Drawings and Specifications filed with the Commissioner and designated HUD Project No. _____, dated (mm/dd/yyyy) _____. Such Drawings and Specifications, which include "General Conditions of the Contract for Construction" (AIA Document A201) and "Supplementary Conditions of the Contract for Construction" (form HUD-2554), have been identified by the Borrower, the Design Architect, the Architect administering the Construction Contract (hereinafter called the "Architect"), the Contractor and the Contractor's Surety.

- (3) Changes in the Drawings and Specifications, or changes by altering or adding to the work contemplated, or orders for extra work, or which change the design concept, may be effected only with the prior written approval of the Lender and the Commissioner and under such conditions as either the Lender or the Commissioner may establish.
- (4) (a) The Borrower shall make monthly applications on form HUD-92403 for advances of mortgage proceeds from the Lender. Applications for advances with respect to construction items shall be for amounts equal to (i) the total value of classes of the work acceptably completed; plus (ii) the value of materials and equipment not incorporated in the work, but delivered to and suitably stored at the site; plus (iii) the value of components stored off-site in compliance with applicable HUD requirements; less (iv) 10 percent (holdback) and less prior advances. The "values" of both (i), (ii), and (iii) shall be computed in accordance with the amounts assigned to classes of the work in the "Contractor's and/or Mortgagor's Cost Breakdown", attached hereto as Exhibit "B", and made a part hereof. Each application shall be filed at least _____ days before the date the advance is desired, and the Borrower shall be entitled thereon only to such amount as may be approved by the Lender and the Commissioner.
- (b) Upon completion of the improvements, including all landscape requirements and off-site utilities and streets, the Borrower shall furnish to the Lender and the Commissioner satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities and by the rating or inspection organization, bureau, association or office having jurisdiction; and that all requisite certificates of occupancy and the approvals have been issued. The balance due the Borrower hereunder shall be payable at such time after completion as the Commissioner authorizes the release of the holdback. However, the Lender may withhold final payment until after the expiration of any period which mechanics and materialmen may have for filing liens.
- (c) The Borrower agrees that any funds required for the completion of the Project over and above the proceeds of the loan which have been deposited with the Lender for that purpose shall be advanced by the Lender to the Borrower prior to the advance of any proceeds of the loan "(i) if any portion of these funds is to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, mortgage proceeds may, with the prior written approval of the Commissioner, be advanced before the full disbursement of such grant or loan funds, (ii) if all or part of the funds are provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, the mortgagee may accept, in lieu of the funds, an agreement which shall be entered into by HUD, the governmental agency or instrumentality, the mortgagor and the mortgagee."
- (d) The Borrower covenants that it will hold in trust each advance hereunder for application to the items for which such advance was requested and approved.
- (e) The Borrower agrees that the loan shall at all times remain in balance. The Lender shall, in accordance with the provisions of this agreement, continue to advance to the Borrower funds out of the proceeds of the loan as long as the loan remains in balance and the Borrower is not in default hereunder or under the Note or Mortgage. The loan shall be deemed to be in balance only when the undistributed proceeds of the loan (after provision for reserves, fees, expenses and other deposits required by the Lender or the Commissioner) equal or exceed the amount necessary (based on the Commissioner's estimate of the cost of construction) to pay for all work completed and all materials delivered, for which payment has not been made, and the cost of completing construction of the project in accordance with the Drawings and Specifications.
- (5) The Lender shall advance to the Borrower out of the funds referred to in (4)(c) above, or out of the proceeds of the loan, amounts for application to the charges or items enumerated below, but only to the extent that such charges have accrued, or that the Borrower is otherwise entitled to payment on account of such items.
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|---|----------|
| (a) Interest during construction | \$ _____ |
| (b) Real estate taxes during construction | \$ _____ |
| (c) Insurance during construction | \$ _____ |
| (d) FHA mortgage insurance premium | \$ _____ |
| (e) FHA examination fee | \$ _____ |
| (f) Initial service charge | \$ _____ |
| (g) Title and recording expense | \$ _____ |
| (h) Inspection fee | \$ _____ |
| (i) _____ | \$ _____ |
| (j) _____ | \$ _____ |
| (k) _____ | \$ _____ |
- (6) The Borrower shall cause either this instrument or the construction contract under which the improvements are to be erected to be filed in the public records, if the effect thereof will be to relieve the mortgaged property from mechanics' and materialmen's liens. Before any advance hereunder, the Lender may require the Borrower to obtain from the contractor and all subcontractors and materialmen dealing directly with the principal contractor acknowledgments of payment and releases of lien down to the date covered by the last advance, and concurrently with the final payment for the entire project. Such acknowledgments and releases shall be in the form required by local lien laws and shall cover all work done, labor performed and materials (including equipment and fixtures) furnished for the project.

- (7) The Borrower shall, as a condition precedent to the first advance hereunder, furnish the Lender with a certified, current survey of the mortgaged property and a mortgagee's title policy (or other evidence of title) in form, substance and amount satisfactory to the Lender and the Commissioner. Said policy (or other title evidence) shall be extended so as to cover each and every advance of said loan at the time of payment thereof and shall show no mechanics' or materialmen's liens against the mortgaged property. The Borrower shall furnish duplicate originals of said survey and title policy (or title evidence) for the Commissioner.
- (8) The Borrower agrees that said project shall be constructed strictly in accordance with all applicable ordinances and statutes, and in accordance with the requirements of all regulatory authorities, and any rating or inspection organization, bureau, association or office having jurisdiction. The Borrower further agrees that said project shall be constructed entirely on the aforesaid property and will not encroach upon any easement or right-of-way, or the land of others; and that the buildings when erected shall be wholly within the building restriction lines, however established, and will not violate applicable use or other restrictions contained in prior conveyances, zoning ordinances or regulations. The Borrower shall furnish from time to time such evidence with respect thereto as may be required by the Lender or the Commissioner and, upon completion of construction, shall furnish a survey, certified by a registered surveyor, which shows the project to be entirely on said property and to be free from any such violations.
- (9) If the Borrower at any time prior to the completion of the project abandons the same or ceases work thereon for a period of more than 20 days or fails to complete the erection of the project strictly in accordance with the Drawings and Specifications, or makes changes in the Drawings and Specifications without first securing the written approval required by paragraph 3 hereof, or otherwise fails to comply with the terms hereof, any such failure shall be a default hereunder, and the Lender, at its option, may terminate this agreement. If the Lender so elects to terminate this agreement, it may use and apply any funds deposited with it by the Borrower, regardless of the purpose for which such funds were deposited, in such manner and for such purposes as the Commissioner may prescribe. If the Lender elects not to terminate this agreement, it may enter into possession of the premises and perform any and all work and labor necessary to complete the improvements substantially according to the Drawings and Specifications, and employ watchmen to protect the premises from injury. All sums so expended by the Lender shall be deemed to have been paid to the Borrower and secured by the Mortgage. For this purpose, the Borrower hereby constitutes and appoints the Lender its true and lawful attorney-in-fact, with full power of substitution in the premises, to complete the project in the name of the borrower. The Borrower hereby empowers said attorney as follows: (a) To use any funds of the Borrower, including any balance which may be held in escrow and any funds which may remain unadvanced hereunder for the purpose of completing the project in the manner called for by the Drawings and Specifications; (b) to make such additions, changes and corrections in the Drawings and Specifications as shall be necessary or desirable to complete the project in substantially the manner contemplated by the Drawings and Specifications; (c) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for said purposes; (d) to pay, settle or compromise all existing bills and claims which may be liens against the mortgaged property, or as may be necessary or desirable for the completion of the project, or for clearance of title; (e) to execute all applications and certificates in the name of the Borrower which may be required by any of the contract documents; (f) to prosecute and defend all actions or proceedings in connection with the mortgaged premises or the construction of the project and to take such action and require such performance as he deems necessary under the accepted guaranty of completion; and (g) to do any and every act which the Borrower might do in its own behalf. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. The Borrower hereby assigns and quitclaims to the Lender all sums unadvanced under the Mortgage and all sums due in escrow conditioned upon the use of said sums for the completion of the project, such assignment to become effective only in case of the Borrower's default.
- (10) The Borrower shall provide or cause to be provided workmen's compensation insurance and public liability and other insurance required by applicable law or by the general conditions included in the Specifications. The Borrower further agrees to purchase and maintain fire insurance and extended coverage on the mortgaged property. All such policies shall be issued by companies approved by the Lender and shall be in form and amounts satisfactory to the Lender and the Commissioner. Such policies shall be endorsed with standard mortgagee clauses making loss payable to the Lender or its assigns; and may be endorsed to make loss during construction payable to the Contractor, as interest may appear. The originals of such policies shall be deposited with the Lender.
- (11) The Lender and its agents and the Commissioner also have the right to inspect building components stored offsite.
- (12) The Borrower shall execute and deliver to the Lender, upon completion of the project, a security agreement and financing statement, or other similar instrument, covering all property of any kind whatsoever purchased with mortgage proceeds and concerning which there may be any doubt as to such property's being subject to the lien of the Mortgage under the laws of the state in which the project is situated.
- (13) The Borrower shall furnish to the Lender assurance of completion of the project in the form specified in the applicable HUD Regulations in effect on the date of this agreement. Such assurance of completion shall run to the Lender as obligee and shall contain a provision granting to the Lender the authority to assign all rights thereunder to the Commissioner.

(14) (a) The Borrower understands that the wages to be paid laborers and mechanics employed in the construction of the project are required by the provisions of Section 212(a) of the National Housing Act, as amended, to be not less than the prevailing wage rates for corresponding classes of laborers and mechanics employed on construction of a similar character in the locality in which the work is to be performed, as determined by the Secretary of Labor with respect to this project. The Borrower hereby states that it has read the aforesaid determination by the Secretary of Labor and is fully familiar with the same.

(b) The Borrower shall, as a condition precedent to any advance hereunder, submit to the Lender (i) with each application for advance prior to the final application, certifications, in form approved by the Commissioner, that all laborers and mechanics employed in the construction of the project whose work is covered by that or any previous application and who have been paid in whole or in part on account of said employment, have been paid at rates not less than the said prevailing wage rates; and (ii) with the final application for advance, certifications, in form satisfactory to the Commissioner, that the project has been fully constructed in accordance with the provisions of this agreement and that all laborers and mechanics employed in the construction of the completed project have been paid not less than the said prevailing wage rates. The Secretary's prevailing wage determination shall be construed to include every amendment to or modification of the determination which may be made prior to the beginning of construction.

(c) The Borrower agrees that should any advances hereunder be ineligible for insurance under the National Housing Act by reason of (i) the nonpayment of the said prevailing wage rates, or (ii) violation of any of the applicable labor standards provisions of the Regulations of the Secretary of Labor, the Lender may withhold from the Borrower all payments or advances payable to the Borrower hereunder

until the Borrower establishes to the satisfaction of the Commissioner that all laborers and mechanics or other persons employed in the construction of the project have been paid said prevailing wage rates and that such violation of the said Labor Standards provisions no longer exists. The written statement of any officer of the Federal Housing Administration or authorized agent of the Commissioner declining to insure any advance of funds hereunder by reason of such nonpayment or violation shall be deemed conclusive proof that such advances are ineligible for mortgage insurance.

(d) The Borrower shall insert the labor standards provisions of the aforesaid Supplementary Conditions of the Contract for Construction in any contract made by him for the construction of the project, or any part thereof, and shall require the Contractor to insert similar provisions in each subcontract relating to the construction of the project.

(15) The Lender and the Borrower agree that the mortgage loan shall be reduced by any amount required by the Agreement and Certification (Form _____) between the parties hereto and the Commissioner, which agreement is incorporated herein by reference to the same extent as if set forth herein at length.

(16) The Borrower shall furnish such records, papers and documents relating to the project as the Lender or the Commissioner may reasonably require from time to time.

(17) The Borrower shall not transfer, assign or pledge any right or interest in, or title to, any funds deposited by the Borrower with the Lender, or reserved by the Lender for the Borrower, without the prior written approval of the Lender and the Commissioner.

(18) As used in this instrument, the term "Lender" shall be deemed to include any person to whom the Note and Mortgage referred to above shall be assigned with the knowledge and consent of the Commissioner. This instrument shall be binding upon the parties hereto and their respective successors and assigns.

(Seal) Attest	Owner
Witness	By
Witness	Title
(Seal)	Lender
Witness	By
Witness	Title