Building Loan Agreement

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

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HUD Project Number:
Project Name:

THIS BUILDING LOAN AGREEMENT, made this _____ day of _____ 20____, by and between _____, a _____ organized and existing under the laws of _____with an office and place of business in _____ County of _____ and State of _____(**Borrower**), and _____, a _____ organized and existing under the laws of _____, having an office and place of business at _____[City] [County] of _____ and State of _____ (**Lender**). (The definition of any capitalized term or word used herein can be found in this Building Loan Agreement, the Regulatory Agreement between Borrower and HUD, the Note, and/or the Security Instrument.)

WHEREAS, Borrower, as the owner in fee simple of, or the owner of the leasehold estate in, the land (**Land**) described in Exhibit A attached to the **Security Instrument**, which Exhibit A is also attached hereto and incorporated herein by reference, has obtained a commitment from Lender for a Loan of _____Dollars ($_____) to aid Borrower in the construction or rehabilitation on said Land of a Project identified above in accordance with Drawings and Specifications hereinafter referred to, and

WHEREAS, Borrower understands that Lender has received a commitment from **HUD** for insurance of said Loan under the provisions of the National Housing Act, as amended, and intends upon execution of the hereinafter mentioned Note and Security Instrument to have the Note endorsed for insurance by HUD. (HUD is not making the Loan.)

NOW, THEREFORE, in consideration of the mutual promises hereinafter set out and of other valuable consideration, the receipt of which is hereby acknowledged, the undersigned agree as follows:

(1) Lender shall make and Borrower shall obtain a 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. The Loan shall be evidenced by a credit instrument (**Note**) dated _____20_____. The Note shall be payable in monthly installments, and shall have a maturity date of _____, 20_____. The Note shall be executed by Borrower and payable to Lender, or order, and shall be secured by a Security Instrument, of even date, on the Land described in the Security Instrument. The Security Instrument shall constitute a valid first lien on said Land 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 Lender and HUD. Lender shall not advance any Loan funds until Borrower and Lender have submitted to HUD documents required by this Building Loan Agreement and the HUD commitment to insure advances, and not until HUD has completed the initial endorsement of the Note.

(2) Borrower shall complete, on the Land, by _____20___, a Project in accordance with Drawings and Specifications filed with HUD dated _____, last revised _____. Such Drawings and Specifications, which include General Conditions of the Contract for Construction (AIA Document A201) (**General Conditions**) and the Supplementary Conditions of the Contract for Construction (HUD-92554M), have been initialed by Borrower, Design Architect, Architect administering the Construction Contract (**Architect**), the Contractor and, if applicable, Contractor's surety or guarantor.

(3) Changes in the Drawings and Specifications, or changes by altering or adding to the work contemplated, or orders for extra work shall have the prior written approval of the Architect. In addition, any such change or order may be effected only with the prior written approval of Lender and HUD and under such conditions as either Lender or HUD may establish.

(4) (a) Borrower shall make monthly applications on HUD-92403 for advances of Loan proceeds from 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 Program Obligations; less (iv) ten percent (10%) (**Holdback**) and (v) less prior advances. The value 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 (HUD-2328) attached to the Construction Contract and also attached hereto as Exhibit B. Each application shall be filed at least fifteen (15) days before the date the advance is desired, and Borrower shall be entitled thereon only to such amount as may be approved by Lender (and HUD, pursuant to Program Obligations).

(b) Upon completion of the Improvements, including all landscape requirements, off-site utilities and streets, and any incomplete construction work as described in the Escrow Agreement for Incomplete Construction, Borrower shall furnish to Lender and HUD satisfactory evidence that all work requiring inspection by the Property 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 other approvals to own and operate the Project have been issued. The balance due Borrower hereunder shall be payable at such time after completion as HUD authorizes the release of the Holdback. However, Lender may withhold final payment until after the expiration of any period that mechanics and materialmen may have for filing liens.

(c) Except as otherwise provided by Program Obligations, Borrower agrees to deposit with Lender cash in the amount of $ _____, an amount that has been deemed by HUD to be sufficient, when added to the proceeds of the Loan, to assure completion of the Project and to pay the initial service charge, carrying charges, and legal and organizational expenses incident to the construction of the Project (**Project Completion Funds**). Borrower agrees that Project Completion Funds shall be advanced by Lender as set forth in the disbursement agreement dated _____, 20_____, approved by Lender and HUD and attached hereto as Exhibit C.

(d) Borrower covenants that it shall hold in trust each advance hereunder for application to the items for which such advance was requested and approved.

(e) Except as otherwise provided in Program Obligations, Borrower agrees that the Loan shall at all times remain in balance. Lender shall, in accordance with the provisions of this Building Loan Agreement, continue to advance to Borrower funds out of the proceeds of the Loan upon insurance thereof by HUD, as long as the Loan remains in balance and Borrower is not in default hereunder or under the Note or Security Instrument.

(5) Lender shall advance to 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 set forth in Exhibit C, but only to the extent that such charges have accrued, or that Borrower is otherwise entitled to payment on account of such items.

TOTAL MAXIMUM ADVANCE (Line 45 of Financial Requirements for Closing (HUD-2283)) $_____

(6) Borrower shall cause either this instrument, waiver of liens or the Construction Contract under which the Improvements are to be erected (or a memorandum thereof) to be filed in the public records, if the effect thereof shall be to relieve the Mortgaged Property from mechanics' and materialmen's liens. Before any advance hereunder, Lender may require 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) Borrower shall, as a condition precedent to the first advance hereunder, furnish Lender with a signed, sealed and certified, current survey of the Mortgaged Property

and a Lender's title insurance policy (or other evidence of title) in form, substance and amount satisfactory to Lender and HUD. 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. Borrower shall furnish duplicate originals of said survey and title policy (or title evidence) to HUD.

(8) Borrower agrees that the 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. Borrower further agrees that except for off-site improvements approved by Lender and HUD, the Project shall be constructed in accordance with the Drawings and Specifications and shall 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 shall not violate applicable use or other restrictions contained in prior conveyances, zoning ordinances or regulations. Borrower shall furnish from time to time such evidence with respect thereto as may be required by Lender or HUD and, upon completion of construction, shall furnish a survey, signed, sealed and certified by a registered surveyor that shows the Project to be entirely on the Land, except for off-site improvements approved by Lender and HUD, and to be free from any such violations.

(9) The Borrower shall have defaulted under this Building Loan Agreement, if, at any time prior to the completion of construction, it: (a) ceases work on the Project for a period of more than twenty (20) days; (b) fails to complete the erection of the Project substantially in accordance with the Drawings and Specifications; (c) makes changes in the Drawings and Specifications without first securing the written approval required by paragraph 3 hereof; (d) otherwise fails to comply with the terms of this Building Loan Agreement without first obtaining the written approval of HUD; or (e) commits an Event of Default under the Security Instrument. In the event of any such default under this Building Loan Agreement, Lender may, at its option, terminate this Building Loan Agreement. If Lender so elects to terminate this Building Loan Agreement, it may use and apply any funds deposited with it by Borrower, regardless of the purpose for which such funds were deposited, in such manner and for such purposes as HUD may prescribe. If Lender elects not to terminate this Building Loan 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 (with such changes as may be approved in writing by HUD), and employ watchmen to protect the premises from injury. All sums so expended by Lender shall be deemed to have been paid to Borrower and secured by the Security Instrument. For this purpose Borrower hereby constitutes and appoints Lender its true and lawful attorney-in-fact, with full power of substitution in the premises, to complete the Project in the name of Borrower. Borrower hereby empowers said attorney as follows: (a) to use any funds of Borrower, including any balance that may be held in escrow and any funds that may remain unadvanced hereunder for the purpose of completing the Project in the manner called for by the Drawings and Specifications (with such changes as may be approved

in writing by HUD); (b) to make such additions, changes and corrections in the Drawings and Specifications (with written HUD approval) 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 that 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 Borrower that may be required by any of the contract documents; (f) to prosecute and defend all actions or proceedings in connection with the Mortgaged Property or the construction of the Project and to take such action and require such performance as it deems necessary under the accepted guaranty of completion; and (g) to do any and every act that 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. Borrower hereby assigns and quitclaims to Lender all sums unadvanced under the Security Instrument and all sums held by Lender in escrow conditioned upon the use of said sums for the completion of the Project, such assignment to become effective only in case of a default by Borrower.

(10) Borrower shall provide or cause to be provided workers compensation insurance and public liability and other insurance required by applicable law, by the general conditions included in the Drawings and Specifications or by the Security Instrument. 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 Lender and shall be in form and amounts satisfactory to Lender and HUD. Such policies shall be endorsed with standard Lender clauses making loss payable to Lender, its successors and assigns; and may be endorsed to make loss during construction payable to the Contractor, as its interest appears. Lender shall have the right to hold the original policies or duplicate original policies.

(11) Lender and its agents and HUD and its agents shall, at all times during construction, have the right of entry and free access to the Project and the right to inspect all work done, and materials, equipment, building components and fixtures furnished, installed or stored either on or off the Land, and to inspect all books, subcontracts and records of Borrower. Lender and HUD have no obligation to make any such inspections. Any and all such inspections by the Lender or its agents shall solely be for the benefit of Lender and HUD. Any and all inspections by HUD or its agents shall solely be for the benefit of HUD. Neither Borrower nor any third party shall have any claims against the Lender, HUD or their respective agents as a result of such inspections. Neither HUD, nor the Lender, nor any of their respective agents assumes any obligation of the Borrower or any other person or entity with respect to the quality of construction of the Project, compliance of said construction with the Drawings and Specifications or any defects in said construction.

(12) Borrower shall execute and deliver to Lender a security agreement and financing statements, or other similar instrument, covering the UCC Collateral.

(13) Borrower shall furnish to Lender assurance of completion of the Project in the form specified by HUD. Such assurance of completion shall run to Lender as obligee and shall contain a provision granting to Lender the authority to assign all rights thereunder to HUD.

(14) (a) 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 wages prevailing in the locality in which the work shall be performed for corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor pursuant to the Davis-Bacon Act and as published in the applicable prevailing wage determination**.** Borrower hereby states that it has read the determination by the Secretary of Labor and is fully familiar with the same.

(b) Borrower shall, as a condition precedent to any advance hereunder, submit to Lender (i) with each application for advance prior to the final application, certifications, in form approved by HUD, 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 those contained in the applicable prevailing wage determination; and (ii) with the final application for advance, certifications in form satisfactory to HUD, that the Project has been fully constructed in accordance with the provisions of this Building Loan Agreement and that all laborers and mechanics employed in the construction of the Project have been paid not less than the said prevailing wage rates. The applicable prevailing wage determination shall be construed to include every amendment to or modification of the determination that may be published prior to the beginning of construction or day the Note is initially endorsed for insurance, whichever occurs first; provided, that if construction has not begun within ninety (90) days after initial endorsement of the Note, the applicable prevailing wage determination shall include any modification of the determination that may be published prior to the beginning of construction.

(c) Borrower agrees that should any advances hereunder be ineligible for insurance under the National Housing Act, as amended, 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, Lender may withhold from Borrower all payments or advances payable to Borrower hereunder until Borrower establishes to the satisfaction of HUD 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 said Labor Standards provisions no longer exists. The written statement of any authorized agent of HUD 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) In accordance with Article 1 of the Supplementary Conditions of the Contract for Construction, Borrower shall insert the labor standards provisions thereof in any contract made 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) Lender and Borrower agree that the Loan shall be reduced by any amount required by the Agreement and Certification (HUD-93305M) between the parties hereto and HUD, which Agreement and Certification is incorporated herein by reference to the same extent as if set forth herein at length.

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

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

(18) As used in this instrument, the term **"Lender"** means the entity identified as "Lender" in the first paragraph of the Security Instrument, or any subsequent holder of the Note, and whenever the term "Lender" is used herein, the same shall be deemed to include the Obligee, or the Trustee(s) and the Beneficiary of the Security Instrument and shall also be deemed to be the Mortgagee as defined by Program Obligations. This Building Loan Agreement shall be binding upon the parties hereto and their respective successors and assigns.

(19) HUD is not a party to this Building Loan Agreement and has no obligation to Borrower or Lender pursuant to this Building Loan Agreement. HUD, pursuant to the Contract of Insurance, has reserved the right to approve or disapprove certain actions in this Building Loan Agreement to protect the mortgage insurance fund.

(20) To the extent not inconsistent with applicable State law, Borrower's liability under the Building Loan Agreement shall be limited to the same extent as set forth in the Note.

(21) No waiver by the Lender of any default under this Building Loan Agreement will be effective unless such waiver is in writing and signed by the Lender and HUD. No waiver by the Lender of any default under this Building Loan Agreement will operate as a waiver of any other default or of the same default on a future occasion. The Lender may delay in exercising or omit to exercise any right or remedy available under this Building Loan Agreement or any other loan document or by law or equity provided without waiving that or any past, present or future remedy. All rights and remedies of the Lender in this Building Loan Agreement and the other loan documents are cumulative, and none of these rights or remedies are exclusive of any other right or remedy allowed at law or in equity or in any other loan document, and all of these rights and remedies may be exercised and enforced concurrently.

(22) This Building Loan Agreement and the other loan documents represent the entire agreement between the Lender and the Borrower with respect to the subject

matter of this Building Loan Agreement and supersede all previous agreements, negotiations, and understandings with respect to the subject matter of this Building Loan Agreement. Neither this Building Loan Agreement nor any of the other loan documents may be amended, altered or changed other than in writing signed by the Lender and the Borrower.

(23) Upon assignment by Lender of its interest under this Building Loan Agreement, Lender shall automatically be released from any and all obligations under this Building Loan Agreement that arise after the date of assignment and Borrower shall look solely to the assignee of this Building Loan Agreement for the enforcement of any of Borrower's rights hereunder.

(24) BORROWER AND LENDER EACH (a) AGREE NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS BUILDING LOAN AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS LENDER AND BORROWER THAT IS TRIABLE OF RIGHT BY A JURY AND (b) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

Each signatory below hereby certifies that each of their statements and representations contained in this Building Loan Agreement and all their supporting documentation thereto are true, accurate, and complete. This Building Loan Agreement has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

BORROWER	**LENDER**
_____	_____
By: _____	By: _____
_____	_____
Print name and title	Print name and title

Attachments: Exhibit A
Exhibit B
Exhibit C

Warning:

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.