



# 203(b) REPAIR ESCROW REHABILITATION LOAN AGREEMENT

**THIS AGREEMENT** ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between the Borrower(s) \_\_\_\_\_ ("Borrower") and Carrington Mortgage Services, LLC ("CMS" or "Lender").

**WHEREAS**, CMS, is a duly licensed mortgage originator and approved FHA 203(b) Repair Escrow lender with principal offices at 1600 South Douglass Road, Suites 110 & 200-A, Anaheim, CA 92806, who may from time to time use licensed third parties, including at times, affiliates, to provide some of its lending services;

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

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

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

- 1) The total amount of the loan will be in the principal amount of \$\_\_\_\_\_ to be advanced to Borrower by CMS as provided in this Agreement and as evidenced in a promissory note of even date herewith ("Note"), all, secured by a mortgage or deed of trust ("Mortgage"), which shall be a first lien on the above Property.
- 2) Payments required under the Note and Mortgage must be made by the Borrower on the date specified, even though the proposed rehabilitation or improvement may not be completed, or the Property may not be suitable for occupancy, on the anticipated date.
- 3) CMS intends to request the Assistant Secretary for Housing-Federal Housing Commissioner ("Commissioner") to insure the loan under the provisions of Section 203(b) of the National Housing Act (the "Act"); and Borrower hereby agrees to conform to, and to cause improvements to be constructed in conformance with all requirements of the Commissioner and the Act.
- 4) CMS shall place that portion of the principal amount of the Note allocated to the total rehabilitation cost, plus any amount deposited by the Borrower or others in cash, in a secured interest bearing account, trust or escrow for the benefit of the Borrower ("Escrowed Funds") subject to the terms and conditions herein and in related agreements.
- 5) CMS shall only release Escrowed Funds once (subject to final inspection fees and subject to a Contingency Reserve). The Escrowed Funds (again, as noted, subject to withholding \$300.00 to be used for final inspection fees and subject to a Contingency Reserve) will be released after: a) a Letter of Completion; b) a satisfactory final Compliance Inspection Report from the approved Appraiser; c) an executed Lien Release from Contractor; d) an executed Contingency Release letter; and, if required, e) issuance of a Certificate of Occupancy, or equivalent, or other final approval by the appropriate governing entity, are all received by CMS.

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

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

CMS may determine that additional compliance inspections are required throughout the rehabilitation process to ensure that the Work is progressing in a satisfactory manner. Release of funds is not authorized on this type of inspection; however, Borrower is responsible for paying the inspection fee.

- 7) a. The cost of repair as indicated on the appraisal report and Homeowner/Contractor Agreement is \$\_\_\_\_\_.
- b. The reserve contingency required by CMS is \$\_\_\_\_\_.
- c. The estimated cost of the final inspection(s) from the approved Appraiser after all of the Work is completed and Administration fees is \$300.00.
- e. The total Escrowed Funds for the Property is (the sum of 7a, b and c) \$\_\_\_\_\_.
- 8) The interest accumulated in the Escrow Funds account will be distributed as required by the 203(b) Borrower's Acknowledgment.
- 9) If the contingency reserve (as per 7b.) or any part thereof is not used, the remaining balance shall be applied as a partial prepayment of the principal balance of the Note. **Such prepayment will not extend or postpone the due date of any monthly installment due under the Note, nor change the amount of such installments.**
- 10) If a dispute arises between the Borrower and the approved General Contractor, the Borrower has the right to hire a new General Contractor. That Contractor must first be approved by CMS prior to any work starting. The Borrower CANNOT act as a General Contractor. If a new General Contractor is not approved by CMS and the work is not done within thirty (30) days from the note date, CMS may, in its sole discretion, make a principal reduction payment with the Escrow Funds. **If the Escrow Funds are used to make such a principal reduction, the final payment to the Contractor will not be available from CMS and shall be the sole responsibility of Borrower.**
- 11) The Borrower will insure that all improvements on the Property are completed pursuant to a, and in accordance with, a Homeowner/ Contractor Agreement as accepted by CMS, including but not limited to, in accordance with the time constraints set forth in the Homeowner/ Contractor Agreement.
- 12) Changes in the Homeowner/ Contractor Agreement must be approved by CMS in writing prior to the beginning any Work. Changes may be requested by writing a letter describing the changes or using form HUD-92577 (a "Request for Acceptance of Changes"). The Request for Acceptance of Changes may be hand delivered, mailed or emailed to [Escrowaccountservicing@carringtonms.com](mailto:Escrowaccountservicing@carringtonms.com).
- 13) Borrower shall cause all improvements to be made in a workmanlike manner and in accordance with all applicable statutes and regulations. All licenses, permits and privileges required by local governmental authorities to rehabilitate the Property shall be obtained by the Borrower(s) or his/her Contractor and submitted to CMS prior to closing.

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- 14) Representatives of CMS and or the Commissioner shall have the right to enter upon the Property at all times during the period of construction and on completion of construction to determine whether the Work conforms with this Agreement and the Homeowner/ Contractor Agreement, and any approved changes to the foregoing, and to determine the amount of Escrow Funds to be released by CMS.
- 15) Borrower will furnish such records, contracts, bills and other documents relating to the Property and the improvements as CMS or the Commissioner may require.
- 16) Without prior, written consent of CMS, no materials, equipment, fixtures or any part of improvements financed with this loan will be purchased or installed subject to conditional sales contracts, security agreements, lease agreements or other arrangements whereby title is retained or the right is reserved or accrues to anyone to remove or repossess any item, or to consider it as personal property.
- 17) The Borrower shall cause either this instrument or the Homeowner/ Contractor Agreement under which the improvements are to be made to be filed in the public records, if the effect of recording will be to relieve the mortgaged property from mechanics' and materialmen's liens. Before any release of Escrowed Funds under this Agreement, CMS may require the Borrower to obtain acknowledgment of payment and releases of lien from the Contractor and all subcontractors and materialmen dealing directly or indirectly with the Contractor ("Lien Release"). These Lien Releases will cover the period through and including the date covered by the last advance, and concurrently with the final payment for the entire project. Such Lien Release must be in the form required by local or state lien laws and must cover all work done, labor performed and materials (including equipment and fixtures) furnished for the project.
- 18) Borrower shall cause the Work to begin as soon as practicable after closing but in any event not later than fifteen (15) days following the date of this Agreement and completed within forty-five (45) days of the date of this Agreement. Should Borrower fail to comply with these terms, CMS may refuse to make any payments under this Agreement. Any funds remaining in the Escrow Funds account shall then be applied as prepayment to a principal reduction of the Note.
- 19) In the event any Stop Work Notices, Notices to Withhold, Mechanic's Liens or other claims of lien are filed against the Property, CMS, after five (5) days' notice to the undersigned of its intention to do so, may, in its sole discretion, pay any or all of such liens or claims, may contest the validity of any of them, paying all costs and expenses of contesting same and/or may cease making payments hereunder and make a principal reduction payment with the Escrow Funds. If the Escrow Funds are used to make such a principal reduction, the final payment to the Contractor will not be available from CMS and shall be the sole responsibility of Borrower.
- 20) A Compliance Inspection Report from the approved Appraiser stating all Work has been satisfactorily completed must be received by CMS within two weeks of completion of the construction or within forty-five (45) days of the date of the note, whichever is earlier. If, for whatever reason, the final inspection verifying that all Work is completed is not received within forty-five (45) days of closing, CMS may, in its sole discretion, make a principal reduction payment with the Escrow Funds. If the Escrow Funds are used to make such a principal reduction, the final payment to the Contractor will not be available from CMS and shall be the sole responsibility of Borrower.
- 21) Failure of the Borrower to perform under the terms of this Agreement or the Note, will make the Note, at the sole discretion of CMS, immediately due and payable.
- 22) The accepted Homeowners/Contractors Agreement is attached hereto as Exhibit "A."
- 23) Failure of CMS to enforce any term or condition of this Agreement on any one occasion shall not act as a waiver by CMS of the enforceability of that term or condition on any other occasion or as to any other term or condition.



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- 24) CMS may assign its rights and obligations hereunder to any duly licensed and approved financing entity at its sole option and discretion who will succeed to all rights and obligations hereunder as if it were the original Lender.
- 25) In the event Borrower fails to perform under the terms of this Agreement or in any way is in breach of this Agreement, CMS shall be entitled to its reasonable costs and attorney's fees associated with enforcing the terms hereof.
- 26) All Notices required by this Agreement and/or the Note, shall be deemed served if in writing and sent, postage prepaid, return receipt requested, to the recipient at the address for the recipient as set forth herein or as either party may designate by written notice.

\_\_\_\_\_  
Mortgagor Signature Date

\_\_\_\_\_  
Mortgagor Signature Date

\_\_\_\_\_  
Mortgagor Signature Date

\_\_\_\_\_  
Mortgagor Signature Date

\_\_\_\_\_  
Signature of Lender Title Date