

HOMEOWNER/CONTRACTOR AGREEMENT-STANDARD

Homeowner (s) ("Homeowner" and/or "Borrower")		Loan #	
Address			
City	State	Zip Code	
Telephone Number	Work #	Cell/Mobile	
General Contractor ("Contractor")		License Number	
Address			
City	State	Zip Code	
Telephone Number	Work #	Cell/Mobile	

THIS AGREEMENT ("Agreement") made this ____ day of _____, 20____, by and between Homeowner and Contractor is for the rehabilitation of the property located at:

_____ ("Property") for which Borrower has applied for a "Renovation Loan" to be provided, if approved, through American Financial Resources, Inc. and its registered DBAs, successors or assigns (collectively herein referred to as the "Lender"). Borrower and Contractor acknowledge and agree that Lender is only willing, if at all, to provide the Renovation Loan strictly subject to the terms and conditions of this Agreement. To be clear, Borrower and Contractor entering into this Agreement does not require Lender to provide any funding, but if Lender approves the Renovation Loan, it is subject to this Agreement.

The Borrower agrees to pay the Contractor the sum of \$_____, which includes all sales tax due by law, for completion of all work and the supply of all materials included in this Agreement, whether rendered by Contractor directly, or through subcontractors and vendors hired by Contractor pursuant to this Agreement, ("Work") together with such increase or decreases in the contract price and scope of work as may be approved in writing by the Lender ("Change Order"), and in accordance with all terms and conditions of this Agreement. Contractor agrees to perform and complete the Work and shall begin within 30 days of notice of the closing of the Renovation Loan and will be completed within 180 days from the Renovation Loan closing. This Agreement consists of all documents detailing the materials as described below, the plans for construction, and include but are not limited to, the Contractor's Estimate, any Drawings and any additional Documents, all as attached hereto, or later added with mutual consent among the Borrower, Contractor and Lender.

General Provisions

1. **Agreement Documents:** Work not covered by this Agreement will not be required unless it is required by reasonable inference as being necessary to produce the intended result. Not to limit the foregoing, but for the sake of clarity, given Contractor's greater knowledge and skill by comparison to Borrower, if a reasonable person would understand material or work to be included or contemplated within the scope of the Work that is specifically included herein, although not specifically set forth, it shall be deemed included and Contractor accepts responsibility for all such items and apprising Borrower of same. By executing this Agreement, Contractor represents that he/she has visited the Property and understands local conditions, including state and local building regulations and conditions under which the Work is to be performed. Work that is covered by this Agreement is required to be completed and it is a material breach of this Agreement to alter the scope of Work without Lender's prior written

approval. If Borrower and Lender do not close on the Renovation Loan contemplated herein, this Agreement shall be null and void and of no force or effect.

2. **Borrower:** Unless otherwise provided for in this Agreement, the Borrower shall secure and pay for necessary easements, exceptions from zoning requirements, or other actions which must precede the approval of a permit for this project. If Borrower fails to do so, then this Agreement is void and of no effect, except to the extent that any Renovation Loan then approved and closed, Lender may use all escrowed funds to make a principal reduction, and if not yet closed, Lender may, at its option, not go through with closing. If the Contractor fails to correct defective Work or persistently fails to carry out the Work in accordance with this Agreement, the Borrower may order the Contractor in writing to stop such Work, or a part of the Work until the cause for the order has been eliminated.
3. **Contractor:** The Contractor shall perform and supervise and direct all aspects of the Work, including but not limited to the Work performed by any subcontractors. He/she shall use the best skill and attention and shall be solely responsible for all construction methods and materials and for coordinating all portions of the Work. Unless otherwise specified in this Agreement, the Contractor will provide for and/or pay for all labor, materials, equipment, tools, machinery, transportation, and other goods, facilities, and services necessary for the proper execution and completion of the Work, subject only to the payments to be made to the Contractor by Borrower as provided for herein. The Contractor shall maintain order and discipline among employees and subcontractors and shall not assign anyone unfit for the task. The Contractor warrants to the Borrower that all materials and equipment incorporated are new and that all Work shall be of good quality and free of defects or faults. The Contractor shall pay all sales and all other taxes related to the Work and shall secure and pay for building permits, fees, inspections and licenses necessary for the completion of the Work unless otherwise specified in this Agreement. The Contractor shall indemnify and hold harmless the Borrower and Lender from and against all claims, damages, losses, expenses, legal fees or other costs arising or resulting from the Contractor's performance of the Work or provisions under this Agreement, including but not limited to liens placed by subcontractors, vendors or other third parties in connection with Work for which Contractor has been paid or for which Contractor will be paid when any noticed defect has been corrected. The Contractor is responsible for, and indemnifies the Borrower and Lender against, acts and omissions of employees, subcontractors and their employees, or others performing the work under this Agreement with the Contractor. The Contractor shall be licensed and insured as required by the locality where the Property is located and for the scope of Work contemplated hereunder, and also comply with all rules, regulations, laws, ordinances and orders of any public authority or HUD inspector bearing on the performance of the work. The Contractor shall provide shop drawings, samples, product data or other information provided for in this Agreement, where necessary or reasonable to do so. If the Contractor shall at any time during the construction phase of the project lose licensing or insurance as required hereunder, Contractor shall immediately notify Lender and Borrower of such circumstance and plan for remediation and cease all Work in progress. If Contractor is unable to timely, in the reasonable discretion of wither Borrower or Lender, rectify the license and insurance circumstance, Contractor may be dismissed from the project and Borrower able to hire a replacement suitable contractor to complete the Work. Provided the Contractor has been minimally paid the cost of all materials delivered at the time of dismissal, all funds in escrow are to be made available first to the replacement contractor in such a situation for the reasonable value of completing the Work, and then remaining funds, if any, may be made available to the dismissed Contractor for any scope of Work not yet paid under this Agreement at the time of dismissal. Borrower is solely responsible for any shortfall of funds to any contractor to complete the scope of Work due to changes in contractors for any reason.
4. **Subcontractor:** Any and all necessary or desired subcontractors needed to adequately perform under this Agreement shall be selected and contracted by the Contractor, except that the Contractor shall not employ any subcontractor to whom the Borrower or Lender may have a reasonable objection, nor will the Contractor be required by the Borrower to employ any subcontractor to whom the Contractor has a reasonable objection. All subcontractors shall be duly licensed and bonded to perform that portion of the Work required of them.
5. **Work By Other Contractor: No self-help is allowed that is part of the agreed Work.** The Borrower reserves the right to perform work related to his home, but which is not a part of this Agreement upon completion and passing inspection of the Work outlined. Any additional project(s) outside of this Agreement, but which may happen while this Agreement is in force, must be reviewed and approved by Lender prior to commencement and may not obstruct timing of the completion of Work. All contractors and subcontractors will be afforded reasonable opportunity for the storage of materials and equipment by the Borrower and by each other. Any costs arising by defective or ill-timed work or storage will be borne by the responsible party.

6. **Disputes:** If a dispute arises between the Borrower and the Contractor, all reasonable efforts to resolve the dispute should be taken so that the Work can be completed. If no resolution can be made, the Borrower and Contractor are subject to Binding Arbitration, see section 7. The Borrower has the right at any time to dismiss the Contractor, subject to the Contractor being paid for all Work to date, including materials on site but not yet installed, and subject to Contractor remediating and correcting all noticed defects in the Work to date, all subject to Binding Arbitration, as necessary. To be clear, if there is a dispute that cannot be resolved and is subject to the arbitration clause herein, and provided all Work timeframes have not been exceeded at that time, Lender is to continue to hold in escrow any disputed funds at issue until a final resolution is agreed or provided by the arbitrator. Lender does not have the right to resolve the dispute independent of the arbitrator. The Borrower may at any time, hire a new Contractor to complete any Work remaining, subject to the foregoing and subject to the new Contractor being reasonably approved by Lender prior to any Work starting. To be clear, Lender does not endorse or recommend any contractor, but merely has the right, but not the obligation, to investigate the Borrower chosen contractor for licensing, insurance and being a HUD approved contractor. The Borrower cannot act as a Contractor or perform any of the Work themselves. If a new Contractor is not approved by Lender, or if the Work is not done within 180 days of the funding date of the Renovation Loan, Lender may, in its sole discretion, make a principal reduction payment with the any funds then remaining in Escrow, subject to any then instituted arbitration proceeding. If the Escrow Funds are used to make such a principal reduction, any further payment to the Contractor will not be available from Lender and shall be the sole responsibility of Borrower. For clarity, if 180 days have elapsed since the closing date of the Renovation Loan, and the Work is not complete for any reason, and no arbitration has been initiated to resolve a then outstanding dispute, Lender has the right (but not the obligation) to use any then remaining funds in Escrow to make a principal reduction on the outstanding Renovation Loan balance without incurring liability to either the Borrower or Contractor. If at any point the Contractor states the Work is complete and a passing inspection is obtained, but the Borrower disputes some aspect of the Work or otherwise has an objection to the Contractor being paid the final payment, Lender shall hold the balance in Escrow until the dispute is resolved, whether by agreement or through arbitration or a court proceeding.
7. **Binding Arbitration:** Claims or disputes relating to this Agreement shall be resolved by the Construction Industry Arbitration Rules of the American Arbitration Association (AAA) unless both parties mutually agree to other methods. The notice of the demand for arbitration must be served on and filed in writing with the other party to this Agreement and with the AAA and must be made in a reasonable time after the dispute has arisen. Notice shall also be provided to Lender. Lender is not liable to either Borrower or Contractor for any act or omission reasonably attributable to the failure to provide such notice. The award rendered by the arbitrator(s) will be considered final and judgment may be entered upon it in accordance with applicable law in any Court having jurisdiction thereof.
8. **Cleanup and Trash Removal:** The Contractor shall keep the Homeowner's residence free from waste or rubbish resulting from the Work. All waste, rubbish, tools, construction materials, and machinery will be removed promptly after completion of the Work by the Contractor.
9. **Time: With respect to the scheduled completion of the Work, TIME IS OF THE ESSENCE.** If the Contractor is delayed at any time in the progress of the Work by approved Change Orders, as defined hereinafter, fire, labor disputes, acts of God or other causes beyond the Contractor's control, the completion schedule for the Work or affected parts of the Work may be extended by the same amount of time caused by the delay with an approved Change Order, but not to exceed 180 days from the loan closing. The Contractor must begin Work as soon as practical but in no event later than thirty (30) days after loan closing and will not cease Work for more than thirty (30) consecutive days. All Work must be completed by within 180 days (6 months) from the closing of the loan, irrespective of any delays or approved extensions.
10. **Time to complete:** A final Compliance Inspection Report from the approved Appraiser stating all Work has been satisfactorily completed, Contractor's Lien Release and the Borrower's Letter of Completion must be received by the Lender within two weeks of completion or 180 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 180 days (6 months) of the date of the note, the Lender has the right to make a principal reduction payment with the funds being held in escrow (except for a noticed dispute having been initiated within that timeframe pursuant to Section 6 and 7 above). **If the funds held in escrow are used to make a principal reduction, the final payment to the Contractor will not be available from the Lender unless the Lender has agreed in writing through an approved Change Order to extend such time.**

11. **Payments and Completion:** Funds for the renovation are released only upon satisfactory draw inspections by the HUD Consultant and Borrower's approval. No funds will be released at the initial funding of the loan. All draws will be released within a reasonable amount of time after Lender's receipt and approval of a Draw Request from the HUD Consultant (minus a 10% holdback reserve to ensure full completion of the Work), a Contractor's signed Lien Waiver and Release, a satisfactory inspection with photos, and Borrower's signed approval. All funds will be provided to the appropriate party via an ACH wire to their account. All requests for funds should be submitted to the lender's construction administrator, AFR's Renovation Department. All requests should be submitted via e-mail to: renovation@afrwholesale.com. They can be contacted at 800-624-0501 or by using the department's e-mail.
12. **Withholding of Funds:** Payments may be withheld because of: (1) defective Work not remedied; (2) failure of Contractor to make proper payments to subcontractors, workers, or suppliers; (3) persistent failure to carry out Work in accordance with this Agreement or these general conditions, or (4) legal claims. Final payment will be due only upon release of any and all liens arising out of the Agreement or submission of receipts or other evidence of payment covering all subcontractors or suppliers who could file such a lien. The Contractor agrees to indemnify the Borrower and Lender against such liens and will refund all monies including costs and reasonable attorney's fees paid by the Borrower and/or Lender in discharging the liens. A ten (10) percent "Holdback" reserve is required by the Lender to assure the Work has been properly completed and there are no liens on the Property.
13. **Protection of Property and Persons:** The Contractor is responsible for initiating, maintaining, and supervising all necessary or required safety programs. The Contractor must comply with all applicable laws, regulations, ordinances, orders or laws of federal, state, county or local governments. The Contractor will indemnify the owner for all property loss or damage to the Borrower caused by his/her employees or his/her direct or indirect subcontractors.
14. **Insurance:** The Contractor shall purchase and maintain insurance necessary to protect the Contractor and Borrower from claims under negligence, workers compensation and from any damage to the Borrower's property resulting from the conduct under this Agreement, and name Borrower as an additional named insured.
15. **Changes in the Agreement:** The Borrower may order changes, additions or modifications (using Request for Acceptance of Changes) without invalidating the Agreement. Such changes must be in writing and signed by the Borrower and accepted by the Lender. Not all Change Order requests may be accepted by the Lender; therefore, the Contractor proceeds at his/her own risk if work is completed and/or proceeded on without a Change Order accepted in writing by Lender. The request for Acceptance of Changes may be emailed to renovation@afrwholesale.com. The Renovation Department can be contacted at 800-624-0501. It should be understood that Lender approves the Renovation Loan based on program requirements and it is not permissible to change or alter the scope of Work to be less than originally approved. Thus, Lender will not approve a Change Order that decreases the overall scope of Work or the overall appraised value of the Property with the Work completed.
16. **Correction of Deficiencies:** The Contractor must promptly correct any Work of his/her own or his/her subcontractors found to be defective or not complying with the terms of the Agreement.
17. **Warranty:** The Contractor shall provide a one-year warranty on all labor and materials provided hereunder. This warranty must extend one year from the date of the completion of the Work or longer if prescribed by law unless otherwise specified by other terms of this Agreement and shall be for one hundred percent (100%) of the cost of replacement or repair for all Work or damages. Disputes will be resolved through the Construction Industry Arbitration Rules of the American Arbitration Association.
18. **Contingency Funds:** A Contingency fund is for the sole purpose of unforeseen issues that develop as a result of the proposed scope of Work detailed in the Lender approved agreements. Therefore, the contingency reserve fund is not to be used for work that is unrelated to the original scope of Work approved by the Lender. If the contingency reserve 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.

19. Termination:

- a. If the Borrower fails to make a payment under the terms of this Agreement, or otherwise materially breaches the terms of this Agreement, through no fault of the Contractor, the Contractor may, upon ten (10) working days, provide written notice to the Borrower and Lender, and if not satisfied, terminate this Agreement.
- b. If the Contractor fails or neglects to carry out the terms of the Agreement, the Borrower shall provide written notice to the Contractor and Lender, after ten (10) working days thereafter and Contractor has not satisfied the items contained in the notice, Borrower may terminate this Agreement. The Borrower may then finish the Work by hiring a new Contractor reasonably acceptable to the Lender. If the cost of completion of the Work exceeds the Agreement balance, the difference, as well as costs and reasonable attorney's fees made necessary to enforce the terms of this Agreement, shall be due and owing to Borrower from Contractor. The Contractor, upon termination of the Agreement pursuant to this clause, releases any claim to the funds remaining in the escrow account and acknowledges that Lender may use any funds remaining in the escrow account to complete the Work including paying the Borrower's new contractor and/or principally reducing the Note. Contractor's only claim is against the Borrower and hereby releases all claims against Lender where Lender reasonably followed the terms of this Agreement.

Please Note:

There are no advances of renovation funds. Under no circumstances can any construction item or material be paid for without the work or material having been acceptably completed or installed (e.g., materials on site cannot be included in the draw request.)

Signature of Owner/Borrower	Date	Signature of Owner/Borrower	Date

Signature of Owner/Borrower	Date	Signature of Owner/Borrower	Date

Contractor's Company Name

Signature of Contractor	Date

Print Name	Title

Please send this agreement, all other renovation forms, all questions and all fund requests to:
renovation@afrrwholesale.com