

Borrower(s) Name and Loan Number: \_\_\_\_\_

## Rehabilitation Loan

- Builder(s) to sign and complete the following documents
  - Bid/Contract
  - Borrower Contractor Agreement
  - 1<sup>st</sup> Tribal Mid America Single Close Acknowledgement
  - Excel Line Item Draw Request Form
  - Builder Certification of Plans HUD form 92541
  - W9
  - Detailed Plans and specs with drawings/blueprints of the home design (if ground up addition to the home. Does not apply for cosmetic rehab work). Plans must include floorplans for all levels and elevations (side views) from all four directions.
  - Method of Payment Form
  - If ground up addition and the property is in a termite state, provide Termite form 99A
- Additional Builder(s) to sign the following documents:
  - Bid/Contract
  - Borrower Contractor Agreement
  - 1<sup>st</sup> Tribal Mid America Single Close Acknowledgement
  - Excel Line Item Draw Request Form
  - Builder Certification of Plans HUD form 92541
  - W9
  - Method of Payment Form
- Borrowers to sign:
  - Bid Contract
  - W9 (one for each borrower)
  - Borrower Contractor Agreement
  - Construction Loan Agreement
  - 1<sup>st</sup> Tribal Mid America Single Close Acknowledgement
- Insurance Requirements:
  - Builders Risk OR Rider to the HOI policy showing renovation coverage
  - Builders Liability (min \$500,000 coverage)
  - Workman's Comp (or statement that says they do not have employees)

# BORROWER/CONTRACTOR AGREEMENT

Loan No. \_\_\_\_\_

Borrower's Name(s):	Case No.:
Property Address:	
Borrower's Phone: Home: (    )	Work: (    )
Contractor's Name:	State of: _____ License No: _____
Address:	
Phone: (    )	

**THIS AGREEMENT**, made this date, \_\_\_\_\_, between the above mentioned Homeowner (Owner) and Contractor, is for the construction or rehabilitation of the property, indicated above, that has been approved for a loan under the Section 184 Program. The Owner shall pay the contractor the sum of \$ \_\_\_\_\_ for completion of the work, including all sales tax due by law, together with increases or decreases in the contract price as may be approved in writing by the Lender. The work will begin within 30 days of loan closing with the Lender, and will be completed by \_\_\_\_\_, unless delayed beyond the Contractor's control. The General Provisions listed below are made a part of this agreement. The contract documents consist of the architectural exhibits listed in the Construction Loan Agreement between the Owner and the Lender, or as described below (or on an attached sheet):

Owner(s) Signature(s) and Date \_\_\_\_\_

Contractor's Signature and Date \_\_\_\_\_

**1. Contract Documents:** This Agreement includes all general provisions, special provisions, and architectural exhibits that were accepted by the Lender. 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. By executing this Agreement, the contractor represents that he/she has visited the site and understands local conditions, including state and local building regulations and conditions under which the work is to be performed.

**2. Owner:** Unless otherwise provided for in the Agreement, the owner will secure and pay for necessary easements, exceptions from zoning requirements, or other actions that must precede the approval of permits for this project. If owner fails to do so then this contract is void. If the contractor fails to correct defective work or persistently fails to carry out the work in accordance with the agreement of general provisions, the owner 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 will supervise and direct the work, and the work of all subcontractors if any. He/she will use the best skill and attention and will be solely responsible for all construction methods and materials and for coordinating all portions of the work. Unless otherwise specified in the Agreement, the contractor will provide 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. The contractor will maintain order and discipline among all employees and will not assign anyone unfit for the task. The contractor warrants to the owner that all materials and equipment incorporated are new and that all work will be of good quality and free of defects or faults. The contractor will pay for building permits, other permits, fees, inspections and licenses necessary for completion of the work unless otherwise specified herein. The contractor will indemnify and hold harmless the owner 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 of this section. The contractor will comply with all rules, regulations, laws, ordinances and order of any public authority of HUD's Inspector's bearing on the performance of the work.

The contractor is responsible for and indemnifies the owner against acts and omissions of employees, subcontractors and their employees, or others performing the work under this Agreement with the contractor. The contractor will provide shop drawings, samples, product data or other information provided for in this Agreement, where necessary.

**4. Subcontractor:** Selected by the contractor, except that the contractor will not employ any subcontractor to whom the owner may have a reasonable objection, nor will the contractor be required by the owner to employ any subcontractor to whom the contractor has a reasonable objection.

**5. Work by Owner or Other Contractor:** The owner reserves the right to perform work related to the project, but which is not a part of this Agreement, and to award separate contracts in connection with other portions of the project not detailed in this Agreement. All contractors and subcontractors will be afforded reasonable opportunity for the storage of materials and equipment by the owner and by each other. Any costs arising by defective or ill-timed work will be borne by the responsible party.

**6. Binding Arbitration:** Claims or disputes relating to the Agreement or General Provisions will 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 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. The award rendered by the arbitration(s) will be considered final and judgment will be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**7. Clean Up and Trash Removal:** The contractor will keep the owner'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.

**8. Time:** With respect to the scheduled completion of the work, time is of the essence. If the contractor is delayed at anytime in the progress of the work by change orders, 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. The contractor must begin work no later than 30 days after loan closing and will not cease work for more than 30 consecutive days.

**9. Payments and Completion:** 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. The final payment will be due after complete release of any and all liens arising out of the contract 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 owner against such liens and will refund all monies, including costs and reasonable attorney's fees, paid by the owner in discharging the debt. A 10 percent holdback is required by the lender to assure the work has been properly completed and there are no liens on the property.

**10. 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 owner caused by his/her employees or his/her direct or sub tier subcontractors.

**11. Insurance:** The contractor will purchase and maintain such insurance necessary to protect from claims under workers compensation and from any damage to the owners(s) property resulting from the conduct of this contract.

**12. Changes in the Contract:** The owner may order changes, additions, or modifications (using form HUD 92577) without invalidating the contract. Such changes must be in writing and signed by the owner and accepted by the lender and HUD. Not all change order requests may be accepted by the lender, therefore, the contractor proceeds at their own risk if work is completed without an accepted change order.

**13. Correction of Deficiencies:** The contractor must correct promptly any work of his/her own or his/her subcontractors found to be defective or not complying with the terms of the contract.

**14. Warranty:** The contractor will provide a one-year warranty on all labor and materials used in the construction or rehabilitation of the property. This warranty must extend one year from the date of completion of the contract or longer if prescribed by law unless otherwise specified by other terms of this contract. Disputes will be resolved through the Construction Industry Arbitration Rules of the American Arbitration Association.

**15. Termination:** If the owner fails to make a payment under the terms of this Agreement, through no fault of the contractor, the contractor may, upon ten working days written notice to the owner, and if not satisfied, terminate this Agreement. The owner will be responsible for paying the contractor for all work completed.

If the contractor fails to or neglects to carry out the terms of the contract, the owner, after ten working days written notice to the contractor, may terminate this Agreement. The owner may finish the job by whatever reasonable method the owner deems expedient. If the cost of completion exceeds the contract balance, the difference, as well as reasonable attorney's fees if necessary, will be paid to the owner by the contractor.



## 1<sup>st</sup> Tribal Mid America Single Close Acknowledgement

**BORROWERS NAMES** \_\_\_\_\_

**PROPERTY ADDRESS** \_\_\_\_\_

**LOAN#** \_\_\_\_\_ **CASE #** \_\_\_\_\_

*The undersigned Contractor and Borrower acknowledges that he/she has read the following and understands Contractor Guidelines for participating in HUD's Section 184 program.*

1. Mid America Mortgage approved Builders only.
2. Builder agrees to carry: 1) Liability Insurance in the amount of \$500,000 or greater and; 2) Workman's Comp insurance when Builder employs workers and; 3) If Borrower doesn't have their own construction coverage, Builder to carry Builder's Risk Insurance in the amount equal to or greater than the construction amount.
3. Construction period starts when mortgage closes. Construction period can be no longer than 6 months for site built homes and 4 months for Manufactured/Modular homes and Rehabs.
4. Builder and borrower must request an extension to construction period through Mid America Mortgage if more time is required to complete the project. Contact the Lender for more information.
5. Construction draws will only be approved for line items that are verified as 100% complete by an inspector. Inspector to provide an inspection report and pictures and contractor to provide an invoice for each draw request. Draw request form must be signed by builder and borrower(s).
6. Inspections are performed by 3<sup>rd</sup> party inspectors or the Tribal Building Department
7. Every draw request has a 10% holdback to be released with the final draw
8. Manu homes and rehab loans are allowed up to 4 draws and 6 (or up to 12) for other construction projects.
9. Contingency reserves are for unforeseeable problems that may arise during construction. Please seed approval from lender **prior** to commencing the contingency work. Once the project is 95% complete, contingency funds may be used for other improvements only upon **prior** approval by lender.
10. Contingency funds may be used prior to 95% completion when a cost overrun or unforeseen circumstance occurs. Contact Lender for approval prior to start of work.
11. **No advances are made to any parties involved in the project. Payments made on 100% completed work. Exceptions are Utility Company bills, Building Permits, Architectural fees.**
12. **Payments are made by WIRE FOR A FEE OF \$30.00 or check sent by regular mail.**
13. Wires/checks will be sent within 48 hours of receipt of an acceptable inspection report & signed draw form
14. Final payment made upon receipt of the following: Final Inspection Report stating home is complete and ready for occupancy; 3 interior/ 3 interior photos of the home taken by the inspector; Warranty of Completion executed by the Builder and Borrower(s); Mortgageor's Letter of Completion signed by the borrower(s), Lien Waiver (not required for Trust Land).

**CONTRACTOR SIGNATURE** \_\_\_\_\_ **DATE** \_\_\_\_\_

**CONTRACTOR NAME** \_\_\_\_\_

**BORROWER SIGNATURE** \_\_\_\_\_ **DATE** \_\_\_\_\_

**BORROWER SIGNATURE** \_\_\_\_\_ **DATE** \_\_\_\_\_

**Builder's Certification  
of Plans, Specifications, & Site**

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

OMB Approval No. 2502-0496  
Exp 02/28/2019

Property Address (street, city, State, & zip code)	Subdivision Name
Mortgage's (Lender's) Name & Address (this is the lender who closed the loan)	FHA Case Number
	Phone Number

**NOTE:** If any of 2,3 or 4 is not checked, the property is **ineligible** for FHA insured financing

**1 Site Analysis Information:** To be completed on all proposed and newly constructed properties.

	YES	NO
<b>a. Flood Hazards.</b> Are the property improvements in a Special Flood Hazard Area (SFHA)?	<input type="checkbox"/>	<input type="checkbox"/>
1) Provide the community number and date of the Flood Insurance Rate Map (FIRM) used to document your answer. Community Number _____ Map Date _____		
2) Is the community participating in the National Flood Insurance Program and in good standing?	<input type="checkbox"/>	<input type="checkbox"/>
3) If "Yes" to 1a. above, attach: (i) a Letter of Map Amendment (LOMA) or; (ii) a Letter of Map Revision (LOMR) or; (iii) a signed Elevation Certificate documenting that the lowest floor (including basement) is built in compliance with 24 CFR 200.926d(c)(4).	<input type="checkbox"/>	<input type="checkbox"/>
4) Is the property located within a Coast Barrier Resource System (CBRS)? (if yes, the property is ineligible for FHA insured financing) Items b-f see additional instructions on page 3	<input type="checkbox"/>	<input type="checkbox"/>
<b>b. Noise.</b> Is the property located within 1000 feet of a highway, freeway, or heavily traveled road? Within 3000 feet of a railroad? Within one mile of a civil airfield or 5 miles of a military airfield?	<input type="checkbox"/>	<input type="checkbox"/>
<b>c. Runway Clear Zones / Clear Zones.</b> Is the property within 3000 feet of a civil or military airfield? If "Yes," is the property in a Runway Clear Zone / Clear Zone?	<input type="checkbox"/>	<input type="checkbox"/>
<b>d. Explosive / Flammable Materials Storage Hazard.</b> Does the property have an unobstructed view, or is it located within 2000 feet of any facility handling or storing explosive or fire prone materials?	<input type="checkbox"/>	<input type="checkbox"/>
<b>e. Toxic Waste Hazards.</b> Is property within 3000 feet of a dump or landfill, or a site on an EPA Superfund (NPL) list or equivalent State list?	<input type="checkbox"/>	<input type="checkbox"/>
<b>f. Foreseeable Hazards or Adverse Conditions.</b> (1) Does the site have any rock formations, high ground water levels, inadequate surface drainage, springs, sinkholes, etc.? (2) Does the site have unstable soils (expansive, collapsible, or erodible)? (3) Does the site have any excessive slopes? (4) Does the site have any earth fill? If "Yes," will foundations, slabs, or flatwork rest on the fill?	<input type="checkbox"/>	<input type="checkbox"/>
If you marked "Yes" to any of the above questions in f, please attach a copy of the State licensed engineers' (soils and structural) reports, designs, and/or certifications showing compliance with HUD requirements to ensure the structural soundness of the improvements and the health and safety of the occupants. Refer to HUD Handbook 4145.1 and HUD Handbook 4140.3 pg. 64-92.	<input type="checkbox"/>	<input type="checkbox"/>

**Complete this section for all properties. The property complies with:**

- 2  HUD Minimum Property Standards in the Code of Federal Regulations at 24 CFR 200.926d.
- 3  HUD Handbook 4145.1, Architectural Processing & Inspections for Home Mortgage Insurance, including Appendix 8, Site Grading & Drainage Guideline.
- 4  IECC ( International Energy Conservation Code) 2009
- 5  Other Code or Local/State Code as follows: \_\_\_\_\_  
    Applicable Provisions \_\_\_\_\_
- 6  CABO One- and Two-Family Dwelling Code, as listed in 24 CFR 200.926b, replaced by IRC (International Residential Code)
- 7  Electrical Code for One-and-Two-Family Dwellings, as listed in 24 CFR 200.926b, or equivalent, **name code:** \_\_\_\_\_
- 8  This is a manufactured (mobile) home and was constructed in accordance with the Federal Manufactured Home Construction & Safety Standards (FMHCS). The label on the manufactured home shows compliance with the FMHCS. I hereby certify that the plans and specifications for all other construction (i.e., site, foundation) comply with the applicable building code or HUD requirement listed above, including paragraph. 3-4, Handbook 4145.1, and the Permanent Foundations Guide for Manufactured Housing.

**HUD Label Number(s):**

Builder or Builder's Agent: I hereby certify that the site analysis information above is true and accurate to the best of my knowledge and belief and that the plans and specifications were designed to mitigate any foreseeable hazards or adverse conditions. On all properties eligible for maximum LTV financing, I further certify that I have personally reviewed the plans, specifications, and site information submitted herewith. Based upon my review, I hereby certify that such plans, specifications comply with the applicable building codes specified above as well as complying with the HUD construction requirements listed above. An "X" marked in the blank by each numbered item indicates that provisions from the marked code apply.

9a. Name of Builder's Company or Builder's Agent (type or print)	10 a. Name & Title of Builder or Builder's Agent (type or print)	
b. Street Address	b. Signature of Builder or Builder's Agent	Date
c. City, State, & Zip Code	c. Telephone Number (include area code)	

11 Affirmative Fair Housing Marketing Plan (AFHMP) Did you sell five (5) or more houses in the last twelve (12) months or do you intend to sell five (5) or more houses within the next twelve (12) months with HUD mortgage insurance?	YES	NO
If "Yes," check either a, b, c, or d below.	<input type="checkbox"/>	<input type="checkbox"/>
a. I am a signatory in good standing to a Voluntary Affirmative Marketing Agreement (VAMA).	<input type="checkbox"/>	<input type="checkbox"/>
b. I have an AFHMP which HUD approved on (mm/dd/yyyy) _____	<input type="checkbox"/>	<input type="checkbox"/>
c. I have a contract with _____ to market this house.	<input type="checkbox"/>	<input type="checkbox"/>
d. I certify that I will comply with the following: (a) Carry out an affirmative program to attract all minority and majority groups to the housing for initial sale or rental. Such a program shall typically involve publicizing to minority persons the availability of housing opportunities regardless of race, color, religion, sex, handicap, familial status or national origin, through the type of media customarily utilized by the applicants; (b) Maintain a nondiscrimination hiring policy in recruiting from both minority and majority groups; (c) Instruct all employees and agents in writing and orally in the policy of nondiscrimination and fair housing; (d) conspicuously display the Fair Housing Poster in all Sales Offices, include the Equal Housing Opportunity logo, slogan and statement in all printed material used in connection with sales, and post in a prominent position at the project site a sign which displays the Equal Opportunity logo, slogan or statement, as listed in 24 CFR 200.620 and appendix to subpart M to part 200. I understand that I am obliged to develop and maintain records on these activities, and to make them available to HUD upon request.	<input type="checkbox"/>	<input type="checkbox"/>

Builder: I hereby certify that the site analysis information is true and accurate to the best of my knowledge and belief. On all properties eligible for maximum LTV financing, I further certify that the plans and specifications submitted herewith have been reviewed by the individual signing above and that the individual has the knowledge and experience necessary to determine whether such plans and specifications comply with the HUD/FHA requirements set forth at 24 CFR 200.926d and with other applicable HUD requirements as determined in accordance with 24 CFR 200.926(d)(1) and (2). Any subsequent changes to these plans and specifications shall comply with the aforementioned requirements. Upon sale or conveyance of the property, the undersigned will promptly furnish to lender a Warranty of Completion of Construction, form HUD-92544 on all properties eligible for maximum LTV financing.

12 a. Name of Builder's Company (type or print)	13 a. Name & Title of Builder (type or print)	
b. Street Address	b. Signature of Builder	Date
c. City, State, & Zip Code	c. Telephone Number (include area code)	

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802). This form must be complete and legible and must be reproduced to include all three pages.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Executive Order 11988 and HUD environmental regulations (24 CFR Part 51) require builders who build newly constructed properties to ensure that the property is not affected by: flood hazards, noise, runway clear zones, explosive/flammable materials storage hazards, toxic waste hazards, and other foreseeable hazards that may affect the site. HUD requires this information to determine whether the site/location factors would adversely affect the dwelling or homeowner. A response is required whenever a builder builds new properties. Confidentiality is not applicable.

## Instructions for Builder's Certification, form HUD-92541

**Item 1. Site Analysis:** All builders must answer all the questions in this item. An addendum may be added, if necessary, to provide a full explanation about any of the site conditions listed.

a. **Flood Hazards:** HUD prohibits new construction in Special Flood Hazard Areas unless there is a Letter of Map Amendment (LOMA), a Letter of Map Revision (LOMR), or an Elevation Certificate in accordance with 24 CFR 200.926d(c)(4) provided to the lender.

**Items 1b.-f** The builder must provide this information for all properties. If the property is a condominium, the builder may have to mitigate the site issue if the project has not yet been approved by HUD.

b. **Noise:** Self-explanatory.

c. **Runway Clear Zones/Clear Zones:** If the property is located in a Runway Clear Zone / Clear Zone, the lender must require, as a condition of borrower approval, that the borrower will sign a statement acknowledging receipt of the notification required by 24 CFR 51.303(a)(3).

d. **Explosive/Flammable Materials Storage Hazard:** Self-explanatory.

e. **Toxic Waste Hazards:** Self-explanatory.

f. **Foreseeable Hazards or Adverse Conditions:** Self-explanatory.

**Items 2 - 8:** The builder/builder's agent must complete these items as follows:

**Items 2, 3&4.** Place an "X" in the box in Items 2, 3 and 4. The certified builder must complete Items 5 thru 8 as follows:

**Item 5.** The local/State code in Item 5 is the accepted code for a locality. The additional requirements needed from the Table in 24 CFR 200.926c, to supplement a partially acceptable local code, must be shown in Item 5.

**Item 6.** When the whole CABO Code is used as the HUD referenced code in jurisdictions with "no code" or an "unacceptable code," place an "X" in the box in Item 6 and place the word "All" in the space.

**Item 7.** Place an "X" in the box on line 7, and, if applicable name equivalent code.

**Item 8.** If the dwelling is a manufactured (mobile) home, place an "X" in the box in Item 8. Properly complete lines 4 through 7 for all "foundation and site work." Insert the HUD label number(s) in the box provided.

**Items 9 & 10.** The builder or the builder's agent must complete and sign these items. If the builder's agent completes and signs these items the builder's agent is certifying that builder's agent has the knowledge and experience to determine whether the plans and specifications comply with HUD/FHA requirements set forth in 24 CFR 200.926d and with other applicable HUD requirements in 24 CFR 200.926(d)(1) and (2). The builder's agent is further certifying that the information about the site is accurate to builder's agent's best knowledge and belief.

**Item 11.** If a builder has sold or intends to sell five (5) or more newly constructed properties within a twelve (12) month period, the builder is required to have one of the following:

a. Be in good standing to a Voluntary Affirmative Marketing Agreement

b. Have a HUD approved Affirmative Fair Housing Marketing Plan (AFHMP);

c. Have a contract with a Marketing Agent to implement its approved AFHMP; or a contract with a Marketing Agent with signatory to a National Association of Realtors VAMA; or

d. Certify to the requirements which are hereby listed, taken from 24 CFR 200.620.

**Items 12 & 13.** The builder must complete and sign Items 12 and 13. The certification is self-explanatory. All changes to the original form must be initialed and dated by the builder.

### Appraiser / Direct Endorsement Lender's Responsibility

**FHA Roster Appraiser.** The appraiser must receive a fully executed form HUD-92541 before performing the appraisal on proposed or under construction properties or properties less than one year old and never occupied.

The appraiser must review Item 1 and note in the Appraisal Report any discrepancies between the information in Item 1 and the actual conditions observed on site. The appraiser must take into consideration the effects of any site conditions on the value of the property.

**Direct Endorsement Underwriter.** The DE Underwriter must review the Appraisal Report and the Builder Certification as part of the underwriting process, taking into consideration the effect of any site conditions on the value of the property. Page 1 of this form must be complete and legible. Only the builder or the builder's agent is authorized to complete or change this form. The DE Underwriter cannot change and/or modify this certification form.