

**Escrow Agreement
For Non-critical,
Deferred Repairs**

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

OMB Approval No. 0000-0000
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This ESCROW AGREEMENT FOR NON-CRITICAL, DEFERRED REPAIRS made this _____ day of _____, 20____, by and between _____, (**Lender**), whose principal address is _____, and _____, (**Borrower**), whose principal address is _____, [and if applicable, _____ (**Depository Institution**), whose principal address is _____,] (**Agreement**), in connection with HUD Project No. _____, located in the City/County of _____, State of _____, which Project [has been, is being, or will be] [rehabilitated, purchased or refinanced] from the proceeds of a Loan insured by HUD and made by Lender. (The definition of any capitalized term or word used herein can be found in this Escrow Agreement for Non-critical, Deferred Repairs, the Regulatory Agreement between Borrower and HUD, the Note, and/or the Security Instrument.)

RECITALS:

- A. HUD has issued a firm commitment to insure said Loan pursuant to § _____ of the National Housing Act, as amended, and Program Obligations, on which mortgage insurance Borrower is relying for financing of the Project.
- B. The HUD firm commitment is conditioned upon assurance that funds in the amount of \$ _____ be available for the completion of non-critical repairs deferred until after endorsement of the Note (**Escrow**), including all amounts identified in sections 1, 2 and 3 of this Agreement.
- C. The non-critical, deferred repair cost estimate and list of repairs itemized in Exhibit A (Repair Work) are attached to and made part of this Escrow Agreement for Non-critical, Deferred Repairs.
- D. As used herein, "**Completion Date**" means the date that is _____ (____) months following endorsement of the Note by HUD for mortgage insurance.

AGREEMENTS:

In consideration of the mutual promises and undertakings contained herein, and for the purpose of inducing the Lender to make and HUD to insure said Loan, the parties acknowledge and agree as follows:

1. Cash in the amount of \$_____, equal to one hundred percent (100%) of the estimated cost of the Repair Work, has been withheld by Lender from the proceeds of the Loan, or deposited by Borrower with Lender or subject to the control and order of Lender with a depository institution satisfactory to Lender, and is hereby included in the Escrow (**Repair Estimate Amount**). A letter of credit may not be substituted for this amount.

2. An additional cash amount of \$_____, consisting of not less than twenty percent (20%) of the estimated cost of the Repair Work, has been deposited by Borrower with Lender or subject to the control and order of Lender with a depository institution satisfactory to Lender, and is hereby included in the Escrow (**Additional Deposit Amount**), in the form of [*specify as applicable*]:

cash, and/or

one or more unconditional irrevocable letter(s) of credit issued to Lender by a banking institution, attached hereto as Exhibit "A". The rating of the issuing banking institution and the duration of such letter(s) of credit shall comply with Program Obligations.

3. In the event of a cash out refinancing under § 223(f) of the National Housing Act, a further additional cash amount of \$_____, equal to fifty percent (50%) of the cash out proceeds, has been withheld by Lender from the proceeds of the Loan, and is hereby included in the Escrow (**Cash Out Proceeds Amount**).

4. Borrower shall complete the Repair Work, free of all liens, on or before the Completion Date.

5. Subject to the prior written approval of HUD, Lender may release funds from the Escrow in proportion to the cost of work completed.

6. Disbursements from this Escrow shall be made only upon prior written approval of HUD, with the exception of those amounts expended by Lender pursuant to Paragraph 7 of this Agreement, to meet any established cost for which the Escrow was intended.

7. If Borrower has not completed all the Repair Work by the Completion Date, Lender will have the right, subject to HUD approval, to complete the Repair Work, and

to pay the cost thereof, including all costs and a reasonable fee of the Lender, from the Escrow. For this purpose, Borrower irrevocably appoints Lender as its attorney-in-fact, with full power of substitution, to do and perform for Borrower in Borrower's name, place and stead, all matters and things which Lender shall in its judgment deem necessary and proper to effectuate the completion of the Repair Work, and to apply the amount deposited under the Escrow to the payment of debts, expenses, costs and charges of any kind contracted or incurred in connection therewith. The orders given by Lender as attorney-in-fact for Borrower shall be good and sufficient vouchers for all payments made by virtue thereof. In this connection, this power of attorney shall provide Lender with full and sufficient authority to enter into and upon the Project and take charge thereof, together with all materials, appliances, Fixtures and other improvements and to call upon and require contractors to complete the Repair Work. Except for negligence on the part of Lender, Borrower shall indemnify, hold harmless and defend Lender from and against claims of third parties arising from Lender's performance under this paragraph. Lender shall have the right to obtain any property and/or liability insurance coverage which Lender shall in its judgment deem necessary or appropriate in connection with Lender's performance under this paragraph. Subject to written HUD approval, Lender may extend the Completion Date. Lender will not be responsible for performance of the Repair Work beyond the expenditure of the amount available from the Escrow, and if that amount is insufficient, Lender will be under no obligation to proceed further with the Repair Work. The power granted herein is coupled with an interest, and Borrower acknowledges and agrees that all powers granted herein to Lender may be assigned to HUD.

8. Subject to Paragraph 7 of this Agreement, provided that an Event of Default does not then exist, any balance remaining in the Escrow that is attributable to the Additional Deposit Amount, the Cash Out Proceeds Amount, and any portion of the Repair Estimate Amount funded by Borrower separate from Loan proceeds, may be released to Borrower when: (a) all Repair Work has been satisfactorily completed, as determined by HUD, and (b) evidence of clear title has been provided to HUD.

9. In cases where the actual cost of the Repair Work is less than estimated, any resulting excess funds in the Escrow attributable to the Repair Estimate Amount that were funded from Loan proceeds may be used for the following purpose(s): (a) to pay for additional repairs approved by Lender and HUD, the funds for which shall continue to be subject to this Agreement, in addition to further cost certification if Program Obligations so require; (b) to reduce the outstanding Loan balance; (c) to deposit in the Reserve for Replacement.

10. The Escrow, when in the form of cash, shall be held by Lender or a depository institution satisfactory to the Lender and in accordance with Program Obligations, in an account that is fully insured by the United States of America. Lender may, for purposes of this Agreement, draw upon any letter of credit included in the Escrow and convert the same to cash, which cash shall then be held and disbursed pursuant to the terms of this Agreement. Any interest earned on the Escrow shall accrue to the account of Borrower.

11. If any amount deposited under this Agreement is in the form of a letter of credit, the letter of credit must be issued to Lender by a banking institution, and be unconditional and irrevocable. Lender shall not be the issuer thereof unless HUD has granted prior written consent. Lender shall be responsible to HUD for collection under any letter of credit. In the event a demand for payment under the letter of credit is not immediately met, Lender shall immediately provide a cash deposit equivalent to the undrawn balance of the letter of credit.

12. The Escrow shall, at HUD's direction, be subject to immediate application to the Indebtedness in the Event of Default by Borrower under the Security Instrument at any time.

Each signatory below hereby certifies that each of their statements and representations contained in this Agreement and all their supporting documentation thereto are true, accurate, and complete. This 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.

IN WITNESS WHEREOF, the parties have duly executed this Escrow Agreement for Non-critical Deferred Repairs as of the day and year first above written.

BORROWER:

LENDER:

By: _____

By: _____

Print name and title

Print name and title

DEPOSITORY INSTITUTION:

By _____

Name and Title

Attachment: Exhibit "A"

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.

EXHIBIT "A"

Form of Letter of Credit