

Escrow Agreement For Working Capital

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

OMB Approval No. 0000-0000
(Exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average 0.5 hours 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

This ESCROW AGREEMENT FOR WORKING CAPITAL 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] [constructed, 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 Working Capital, 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 a working capital escrow being established and funded as indicated below, which working capital escrow has not been included in the Loan proceeds but which could be funded from excess cash available to Borrower. This requirement applies to both the profit-motivated and the not-for-profit Borrower.

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. At or before initial endorsement of the Note by HUD for mortgage insurance, in accordance with Program Obligations Borrower shall deposit, or has caused to be

deposited with Lender or subject to the control and order of Lender with a depository institution satisfactory to Lender, the sum of \$_____ (**Escrow**).

2. It is agreed that the Lender at all times shall control the Escrow. In the event the Project consists of new construction, the Escrow shall be split evenly between a **Working Capital Amount** and a **Construction Contingency Amount**; in situations other than new construction the Escrow shall consist solely of a **Working Capital Amount**. The Escrow shall take 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. It is understood that the funds in the Escrow may be released or allocated for the purposes indicated below and for no other purpose without the prior written approval of HUD.

a. With respect to the Working Capital Amount:

- (i) the cost of furniture, fixtures, and equipment for the Project that are not paid from Loan proceeds;
- (ii) the cost of marketing and leasing up the Project;
- (iii) for accruals during the course of construction, for interest, mortgage insurance premiums, taxes, ground rents, property insurance premiums and assessments, when funds available for these purposes under the Building Loan Agreement have been exhausted, and also for allocation to such accruals after completion of construction.

b. With respect to the Construction Contingency Amount (if applicable):

- (i) cost overruns;
- (ii) approved change orders.

4. Any unused balance remaining in the Escrow attributable to the Working Capital Amount will be released at Lender's request and returned to Borrower at the later of twelve (12) months after final endorsement or when the Project has demonstrated to HUD's satisfaction that the Project has achieved six (6) consecutive months of Break-Even Occupancy. Break-Even Occupancy is defined as 1.0 debt service coverage, based on all sources of Project income including ancillary income. Any unused balance remaining in the Escrow attributable to the Construction Contingency Amount (if applicable) will be released at Lender's request and returned to Borrower at final endorsement.

5. 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.

6. 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 Working Capital as of the day and year first above written.

BORROWER:

LENDER:

By _____

By _____

Name and Title

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