**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)

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~~**THIS AGREEMENT** is effective as of the _____ day of _____, between _____ (**Lender**) and _____ (**Borrower**).~~**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. ~~Borrower has acquired or refinanced or will construct a project identified as HUD Project Number with the proceeds of an insured loan from Lender.~~ HUD has issued a firm commitment to ~~endorse the Note and~~ insure ~~the~~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. ~~HUD's~~The HUD firm commitment ~~to insure~~ is conditioned upon a working capital ~~deposit~~escrow being established and funded as indicated below, which working capital ~~deposit~~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 ~~premises~~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~~, which acknowledges receipt of same~~ or subject to the control and order of Lender with a depository institution satisfactory to Lender, the sum of $_____ (~~**Deposit**) in~~ **Escrow)**.

~~1.~~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 ~~one~~as applicable*]:

~~a.~~ ☐ cash, and/or
~~b.~~ ☐ ~~a~~one or more unconditional, irrevocable letter(s) of credit issued to Lender by a
_____banking institution~~.~~

~~Lender controls~~, attached hereto as Exhibit "A". The rating of the ~~Deposit,~~issuing banking institution and ~~it~~the duration of such letter(s) of credit shall comply with Program Obligations.

~~2.~~3. It is understood that the funds in the ~~Deposit~~Escrow may be released or allocated for the purposes indicated below and for no other purpose without the prior written approval of HUD~~:~~.

a. ~~The~~With respect to the Working Capital Amount:

(i) the cost of ~~equipping~~furniture, fixtures, and ~~renting~~equipment for the Project ~~after final completion~~that are not paid from Loan proceeds;
~~a.~~ (ii) the cost of ~~construction of~~marketing and leasing up the Project;

~~b.~~ ~~For~~(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.

~~3. Any balance of said funds, remaining in the Deposit after the date of Sustaining Occupancy will be returned to Borrower, provided that Borrower is not in default under the Security Instrument, or unless HUD has directed other disposition. Sustaining Occupancy is defined as (i) achievement of the occupancy percentage and project net operating income used in the final underwriting and approval of the Loan (as shown on the final~~

~~HUD-92264); and (ii) maintenance of the underwritten occupancy percentage and project net operating income for ten (10) of the previous twelve (12) months.~~

~~The Deposit, if~~

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.

~~4.~~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 ~~interest-bearing~~ account that is fully ~~guaranteed~~insured by the United States of America. Lender may, for purposes of this ~~Escrow~~ Agreement ~~for Working Capital~~, draw upon any letter of credit included in the ~~Deposit~~Escrow and convert the same to cash, which cash shall then be held and disbursed pursuant to the terms of this ~~Escrow Agreement for Working Capital.~~ Agreement. Any interest earned on the Escrow shall accrue to the account of Borrower.

~~5.~~6. ~~The Deposit, which is being held under the Contract of Insurance for and on behalf of Borrower, shall~~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 ~~before the expiration of the escrow period~~.

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