

**Escrow Agreement for
Off-site Facilities**
Section 242

**U.S. Department of Housing
and Urban Development**
Office of Hospital Facilities

OMB Approval No. 2502-0602
(Exp. 11/30/2022)

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Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802; 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

This ESCROW AGREEMENT FOR OFF-SITE FACILITIES (“Agreement”) 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 _____], in connection with HUD Project No. _____, located in the City/County of _____, State of _____, which Project will be constructed 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 Agreement, the Regulatory Agreement between Borrower and HUD, the Note, and/or the Security Instrument, except that the term “**Program Obligations**” means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Agreement rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official website: http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips, or a successor location to that site.

RECITALS:

- A. HUD has issued a Firm Commitment to insure said Loan pursuant to the National Housing Act, as amended, and Program Obligations, on which mortgage insurance Borrower is relying for financing of the Project.
- B. It is necessary, in connection with the construction of the Project, to provide certain facilities lying outside of the property lines of the Land on which the Project is located, as set forth in the drawings and specifications for the off-site work dated _____ “**Drawings and Specifications**”), and supporting description and cost estimate, which supporting description and cost estimate are attached hereto as Exhibit “A”, and along with the Drawings and Specifications are made part of this Agreement (“**Off-site Construction**”).
- C. The Firm Commitment is conditioned upon the satisfactory assurance from Borrower that sufficient funds are available for the completion of Off-site Construction as indicated below.
- D. As used herein, the term “**Completion Date**” shall mean the date of _____, 20____.

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, Borrower shall deposit, or cause to be deposited, with Lender or subject to the control and order of Lender with a depository institution satisfactory to Lender in accordance with Program Obligations, the sum of \$_____ (“**Escrow**”).
- 2. It is agreed that the Lender at all times shall control the Escrow. The Escrow shall take the form of [*specify as applicable*]:
 - cash , and/or
 - (if permitted by Program Obligations) one or more unconditional, irrevocable letter(s) of credit issued to Lender by a banking institution, attached hereto as Exhibit “B”. The rating of the issuing banking institution and the duration of such letter(s) of credit shall comply with Program Obligations.
- 3. Borrower shall complete and/or cause to be completed to the satisfaction of Lender and HUD, the Off-site Construction, free of all liens and assessments, including liens and assessments against the Mortgaged Property, on or before the Completion Date. Borrower shall remedy or cause to be remedied, to the satisfaction of HUD, (a) all defects in the Off-site Construction due to faulty materials, faulty workmanship, or defective materials, and (b) all damage to the Project resulting from such defects, which defects or damage become apparent within twelve (12) months from final completion of the Off-site Construction (“**Latent Defects**”).
- 4. If the Drawings and Specifications provide that the Off-site Construction or any part thereof shall be performed by the municipality or political subdivision in which the Mortgaged

Property lies, then such proportionate amount of the Escrow that is attributable to the portion of the Off-site Construction to be performed by said municipality or political subdivision, shall be held by the Lender and applied in payment of any special assessment which may be levied against the Mortgaged Property by reason of such improvement, and if not so levied or assessed, or to be so levied or assessed, may be released to the Borrower subject to Paragraph 7 of this Agreement.

5. Disbursements from the Escrow shall be made only upon prior written approval of HUD, with the exception of those amounts expended by Lender pursuant to Paragraph 6 of this Agreement, to meet any established cost of the Off-site Construction for which the Escrow was intended. The sum to which the Borrower shall be entitled to receive under any disbursement requested pursuant to this paragraph shall be the cost of the portions of Off-site Construction acceptably completed, as approved by Lender and HUD, less ten percent (10%) and less prior disbursements of Escrow funds.
6. In the event Borrower has not completed and/or caused to be completed all the Off-site Construction by the Completion Date, and upon receiving written instructions from HUD, Lender shall proceed to complete the Off-site Construction in accordance with the Drawings and Specifications, 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 Off-site Construction in accordance with the Drawings and Specifications, 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 location of the Off-site Construction and take charge thereof, together with all materials, equipment and other improvements and to call upon and require contractors to complete the Off-site Construction. Except for intentional misconduct or gross 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 Off-site Construction 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 Off-site Construction. 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.
7. Subject to Paragraph 6 of this Agreement, at Borrower's written request and with written HUD approval in accordance with Program Obligations, any balance remaining in the Escrow will be released to Borrower provided the following conditions are met:

- (a) thirty (30) days have passed since the completion of the Off-site Construction required by the Drawings and Specifications to the satisfaction of Lender and HUD;
 - (b) no liens or assessments have been placed against the site of the Off-site Construction or the Mortgaged Property;
 - (c) an Event of Default does not then exist; and
 - (d) Latent Defects assurances that are compliant with Program Obligations have been provided in the form of a cash escrow, letter of credit, or a surety bond from a surety on the accredited list of the U.S. Treasury, in an amount equal to two and one-half percent (2 ½ %) of the amount of the Escrow (“**Latent Defects Deposit**”), which shall be held as part of this Agreement. Said sums may be used for the correction of Latent Defects in the event Borrower fails to make such corrections, or fails to cause such corrections to be made. Any balance remaining on account of the Latent Defects Deposit shall be released to Borrower, upon the latter of (i) fifteen (15) months from the completion of the Off-site Construction, or (ii) at such time as the Latent Defects have been corrected to the satisfaction of HUD.
8. 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. Lender may, at any time, for any reason or no reason, 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. Fees charged by Lender and any interest earned on the Escrow shall be governed by Program Obligations.
9. The Escrow may, at HUD’s direction, be subject to immediate application to the Indebtedness if an Event of Default by Borrower occurs at any time.

Each signatory below hereby certifies under penalty of perjury such signatory's statements and representations contained in this Agreement and all supporting documentation provided by such signatory 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 Off-site Facilities as of the day and year first above written.

BORROWER:

LENDER:

By _____

By _____

Print Name and Title

Print Name and Title

DEPOSITORY INSTITUTION:

By _____

Print Name and Title

Attachments: Exhibit "A"
Exhibit "B"

EXHIBIT "A"

Off-site Construction Supporting Description and Cost Estimate

EXHIBIT "B"

Form of Letter of Credit