ESCRROW AGREEMENT FOR OFF-SITE FACILITIES

THIS AGREEMENT made this day of , 19 , by and between , hereinafter called the Depositor, and , a corporation having its principal office in , hereinafter called the Depositary.

WITNESSETH: WHEREAS has entered into a certain Building Loan Agreement with , hereinafter called the Borrower, dated the day of , 19 , providing for the construction of a certain housing project to be financed by a building loan secured by a Mortgage, which Mortgage is to be issued by the Federal Housing Commissioner (who together with his authorized agent is hereinafter called the "Commissioner") under the provisions of the National Housing Act, as amended, and

WHEREAS it is necessary, in connection with the construction of said project, to provide certain facilities lying outside of the property lines of the project as described in the drawings and specifications attached hereto and made a part hereof and as identified in Schedule "A" attached hereto and which are hereinafter referred to as "off-site construction;" and

WHEREAS the Mortgage is writting to make advances of mortgage money for the construction of the project and the Commissioner is writting to issue advances of mortgage money under the terms of the National Housing Act without mortgagor having paid for any of the said facilities, and it is necessary that the aforesaid off-site construction will be installed and completed and will be guaranteed against faulty workmanship and/or materials for a period of one year from the date of acceptance by the Commissioner; and

WHEREAS the Depositor is and as such is primarily interested in the successful completion and operation of the project mentioned and the completion of said off-site construction,

NOW THEREFORE THIS AGREEMENT WITNESSETH: That for and in consideration of the premises hereabove set forth and for the purpose of inducing the Commissioner to issue the advances of mortgage money aforesaid, on the terms and in consideration of the sum of Dollars ( ) paid by the Depositor to the Depositary, the parties hereto agree as follows:

The Depositor hereby deposits with the Depositary, who hereby acknowledges the receipt thereof, the sum of Dollars ( ) which shall be held by said Depositary and disbursed as follows:

(1) To the Depositary upon application made by him to the Depositary on FHA Form 2664, Request for Approval of Advance of E-crew Funds, in quadruplicate, on or about the first day of each month after the commencement of work on an off-site installation. The sum to which the Depositary shall be entitled upon any such release of escrow funds shall be the estimated cost of the portion of the work actually completed, as approved by the Federal Housing Commissioner, computed in accordance with Schedule "A" at 10% and less price releases of escrow funds. Thirty days after the completion of all work required by Schedule "A" in the satisfaction of the Federal Housing Commissioner, the Depository shall be entitled to the Depository's share based on the escrow fund herein established.

(2) If instead of performing the off-site work, (as any part thereof) Depository shall cause or permit the same or any part thereof to be performed by or for the account of the municipality or political subdivision in which the mortgage property lies, then such portion of the escrow fund as is represented by the estimated cost of such portion of the off-site work as is to be performed by or for the account of the municipality, shall be held by the Depositary and applied in payment of any special assessment which may be levied against the real property included in the aforesaid mortgage by reason of such improvement, and if not so issued or assessed, or to be paid in certified checks, may be released to the Depositary upon completion of the work, with the written consent of the Commissioner, unless required to meet the cost of the off-site work.

(3) In the event of Depository's failure to complete the said off-site construction as or before , 1991, in accordance with drawings and specifications or Schedule "A", or fails to produce to the Depositary the written approval of said work by the Commissioner, or in the event there is a default in the mortgage issued by the Commissioner resulting in the assignment of said mortgage to the Commissioner or acquisition of the property by the Commissioner, the Depository shall proceed as provided in either paragraph (a) or paragraph (b) or paragraph (c) below:

(a) Upon receiving written instructions from the Commissioner to such effect, the Depositary shall proceed to complete the said work in accordance with the drawings and specifications and pay the cost thereof, including all costs and charges of the Depositary for the said work deposited with it, and for the purpose of the said Depository hereby irrevocably authorize and empower the Depositary to de and perform for it, the said Depository and in its name, place and stead, all matters and things which the said Depositary shall be in its judgment determine necessary and proper to be done to effectuate the completion of said off-site construction, in accordance with the drawings and specifications, and to apply the said amounts to the payment of debts contract or incurred for work done or for materials furnished therefor, as either, in and about said off-site construction and for all expenses, costs and charges in connection therewith, and for the Depositary doing, this waiver of attorney shall be full and sufficient authority and the order so given and signed by the said Depository an exonerating in fact shall be good and sufficient voucher for all payments made by virtue thereof. Further, in such event, the Depository hereby irrevocably authorize and empower the Depositary to enter into and upon the said premises and take

* NOTE: Rate the relationship of Depository to the project as "Principal Beneficiary/Owner".

The off-site construction constructed should be the development and structuring party in cooperative management type projects. Therefore, the Depositary recognizes that the funds deposited with the Depositary pursuant to the terms of this Agreement were obtained from the cooperative management corporation.
change thereof, together with all materials and appliances thereto belonging, and therein in the name of the said Depository, or his successors, to call upon and receive the annual assessments for the work to be done and for the materials to be furnished in and about the completion of the off-site construction, to proceed to complete the said work according to the drawings and specifications or any changes, alterations, additions or modifications of the said specifications or as may be deemed expedient or necessary by the Commissioner and to do whatsoever in the Depository's judgment it shall deem necessary to be done to secure the completion of the said off-site construction according to the drawings and specifications and in accordance with the instructions of the Commissioner. In the event the work is completed by Depository in accordance with the provisions hereof and written approval of said work is given by the Commissioners, any unexpended balance of the said sum so deposited shall thereafter be returned by the Depository to the Depository, without interest. The Depository shall in no event be responsible for the completion of the said work beyond the expenditure of the sum deposited and if said sum is insufficient for such purpose, the Depository shall be under no duty to proceed further with the work or to demand or obtain additional sums from the Depositor.

(b) Upon receiving written instructions from the Commissioner so to do, the Depository shall pay to the Mortgagee, to be applied to the reduction of the mortgage debt in the next due installments of principal of the mortgage debt, all of the unexpended balance of the sum on deposit with the Depository. If said balance shall be more than sufficient to pay off the mortgage indebtedness outstanding, including all costs and obligations to the Mortgagee, any balance remaining shall be returned to the Depositor, without interest.

(c) In case there should be a default under the insured mortgage and the mortgagee shall assign the mortgage to the Federal Housing Commissioner pursuant to the contract of mortgage insurance then the Depository shall turn over the deposit or any remaining balance thereof to the Federal Housing Commissioner who shall thereupon act as Depository and shall have all the powers of the Depository set forth herein and in addition shall have the power to apply the remaining funds deposited hereunder to any sum due under the mortgage.

(4) Depository for the consideration above set forth, and (if there is more than one Depository, jointly and severally) unconditionally undertake(c) and agree(s) and guarantee(s) as written notice and demand at the Mortgagee or of the Commissioner, at the sole expense of the Depositories and without recourse against the Mortgagee, the Mortgagee or the Commissioner to remedy or cause to be remedied any faulty materials and/or workmanship in the off-site work included in this agreement and any damage, whatsoever caused thereby, which shall develop or appear within one year from the date of acceptance of same by the Commissioner. This guarantee shall be a continuing guarantee extending for a period of two years from the date of acceptance by the Commissioner.

If the Depository shall fail or refuse to commence in good faith to remedy any such defect, fault or condition within 60 days after written demand, mailed to Depository at ______________, then Depository shall pay to the Mortgagee or Commissioner (as the case may be) an amount twice the cost of the remedial work as estimated by the Commissioner or the Mortgagee, any examples after paying the cost of such work to be settled in Depository.

It is the intention of the parties to this agreement that the Depository shall act solely at all times on instructions from the Commissioner with respect to the said sum deposited with it by the Depository and for no act of the Depository hereunder or otherwise pertaining to the said Depository of any and all liability or claims of any nature. The Depository agrees to pay all costs or expenses incurred by said Depository (including court costs and reasonable attorneys' fees) by reason of acting on Depository of the said fund.

It is understood and agreed that whenever used herein the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all persons.

This agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto and upon the legal representatives of the Depository. The word "Mortgage" shall be deemed to include a deed of trust or any mortgage or any contract or agreement or assignment or any mortgage, or any assignment or assignee. The word "Commissioner" or the words "Federal Housing Commissioner" shall be deemed to include his successor or successors.

IN WITNESS WHEREOF the parties hereto have hereunto caused these presents to be executed on their behalf and as their acts on this day of __________. D. C.

ATTEST:

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If active has first contract for off-site construction and contractor has supplied satisfactory bond (Form 4676), these two paragraphs may be deleted.