

Capital Advance Program Escrow Deposit Agreement

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

OMB Approval No. 2502-0470
(exp. 8/31/2013)

Under Section 202 of the Housing Act of 1959 or
Section 811 of the National Affordable Housing Act

Public reporting burden for this collection of information is estimated to average 30 minutes 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. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information collection is necessary to ensure that viable projects are developed. It is important to obtain information from applicants to assist HUD in determining if nonprofit organizations initially funded continue to have the financial and administrative capacity needed to develop a project and that the project design meets the needs of the residents. The Department will use this information to determine if the project meets statutory requirements with respect to the development and operation of the project, as well as ensuring the continued marketability of the projects. This information is required in order to obtain benefits. This information is considered non-sensitive and no assurance of confidentiality is provided.

This agreement made this _____ day of _____, 20____, by and between (owner): _____, (hereinafter called "Owner"), party of the first part, and (depository): _____, (hereinafter called "Depository"), party of the second part;

Witnesseth:

Whereas, the above-named Owner is now constructing a housing project in _____, County of _____, State of _____, identified as (name of project): _____, (Project No. _____) under a certain Capital Advance Agreement between the Owner and the Department of Housing and Urban Development (hereinafter called "HUD"), dated the _____ day of _____, 20____, which Capital Advance Agreement is by reference incorporated herein and made part hereof; and

Whereas, the said Owner has not at the present time completed certain improvements required by said Capital Advance Agreement as listed in the exhibit attached hereto, identified as "Exhibit A," but intends to complete said improvements; and

Whereas, in order to induce HUD to advance the entire amount of the Capital Advance provided for in said Capital Advance Agreement prior to completion of all said improvements, the Owner desires to provide security for the completion of said improvements;

Now, Therefore, for and in consideration of the premises hereinabove set forth, the parties hereto agree as follows:

1. The Owner covenants and agrees:
 - (a) To complete the improvements enumerated in Exhibit A on or before the _____ day of _____, 20____, the said work to be done and completed free and clear of all liens and in accordance with the Drawings and Specifications referred to in said Capital Advance Agreement. The Owner further agrees to pay for all work and material necessary for completion of said work.
 - (b) That all work performed pursuant to the provisions of this agreement shall be subject to the Labor Standards Procedures and Prevailing Wage Requirements accepted by the original general contractor in executing the back of HUD-92448, Contractor's Certificate of Prevailing Wage Requirements. The terms and provisions of said Form HUD-92448, are hereby specifically accepted by the Owner. Prior to release of any funds provided for herein, Owner shall submit HUD-92448, duly executed by each and every contractor performing any of the work and dated subsequent to completion of such work.
2. The Owner herewith deposits with the Depository, and the Depository acknowledges receipt thereof, the sum of _____ Dollars (\$ _____), with such deposits continuously collateralized with specific and identifiable U.S. Government or Agency Securities prescribed by HUD, which said sum shall be held by the Depository and disbursed as follows:
 - (a) In the event the Owner completes the construction of said improvements in accordance with the Drawings and Specifications above referred to on or before the date agreed to in Paragraph 1 above, and there is no default under the mortgage, the Depository shall upon receipt of written approval of said work from HUD return to the Owner, without interest, the sum herewith deposited and any interest earned to be paid to HUD.
 - (b) In the event the Owner fails to complete the improvements on or before the date agreed to in Paragraph 1, or defaults under the mortgage, the Depository, upon receiving written instructions from HUD so to do, shall pay to HUD the unexpended balance of the sum herewith deposited including any interest earned to be applied in the amount and manner speci-

fied by HUD to the obligations of the Owner.

(c) In the event the Owner fails to complete the said improvements on or before the date agreed in Paragraph 1 above in accordance with said Drawings and Specifications and fails to produce to the Depository the written approval of said work by HUD, or in the event the Depository receives from HUD on or after said date notice that the said improvements have not been completed in accordance with Drawings and Specifications, HUD shall have the right and/or option to proceed to complete said work in accordance with the Drawings and Specifications and pay the cost thereof, including all costs and charges of the Depository from the sum herewith deposited, and for this purpose the Owner hereby irrevocably authorizes and empowers HUD to do and perform for it, the said Owner and in its name, place and stead, with full powers of substitution, all matters and things which HUD shall in its judgment deem necessary and proper to be done to effectuate the completion of the said improvements in accordance with the Drawings and Specifications and to apply the moneys herewith deposited to the payment of debts contracted or incurred for work done or for materials furnished therefor, or either, in and about said work and for all expenses, costs and charges in connection therewith, and this warrant of attorney shall be HUD's full and sufficient authority, and the orders given and signed by HUD (as attorney-in-fact for the Owner) shall be good and sufficient authority for all payments made by virtue thereof. Further, in such event the Owner hereby irrevocably authorizes and empowers HUD to enter into and upon the said Project and take charge thereof together with all materials and appliances there-

unto belonging, and in the name of the Owner, as its attorney-in-fact, to call upon and require the several contractors for work to be done and for materials to be furnished in and about the completion of said improvements to proceed to complete the said improvements in accordance with the Drawings and Specifications or any changes, alterations, additions or modifications of the same as may be deemed expedient or necessary by HUD and to do whatsoever shall be necessary to be done to secure the completion of the said improvements according to the Drawings and Specifications and in accordance with the instructions of HUD. In the event the work is completed by HUD in accordance with provisions hereof, any unexpended balance of the sum deposited with the Depository shall thereupon be returned to the Owner without interest unless the mortgage is in default.

3. It is the intention of the parties to this Agreement that the Depository shall act solely at all times on instructions from HUD with respect to the said sum deposited with it by the Owner and for so acting the Owner hereby expressly releases and relieves the said Depository of any and all liability or claims of any nature. The said Depository shall have a prior lien on said fund, however, for any and all costs or expenses incurred by it (including court costs and reasonable attorney's fees) by reason of acting as Depository of the said fund.
4. This Agreement is entered into by the parties hereto for the benefit of the holder of the Section 202 or 811 mortgage from HUD on said project and for the benefit of HUD either of which shall have the right to act as Depository and/or enforce the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have hereunto caused these presents to be executed on their behalf and their seals affixed the date and year first above written.

Attest:
Owner:

By:
President:

Attest:
Depository:

By:
President:

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)