

Escrow Agreement for Working Capital

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

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This ESCROW AGREEMENT FOR WORKING CAPITAL (Agreement) made this _____ day of _____, 20____, by and between the United States Department of Housing and Urban Development whose principal address is _____, and _____, (Owner), 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 [has been, is being, or will be] [constructed, rehabilitated, purchased or refinanced] from the proceeds of a Capital Advance provided to the Owner pursuant to Cranston-Gonzalez Affordable Housing Act of 1990, as amended, or Section 202 of Housing Act of 1959, as amended. (The definition of any capitalized term or word used herein can be found in this Escrow Agreement for Working Capital, the Regulatory Agreement between Owner 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://www.hud.gov/offices/adm/hudclips/index.cfm> or a successor location to that site)).

RECITALS:

A. HUD has issued a Firm Commitment to the Owner pursuant to the Cranston-Gonzalez Affordable Housing Act of 1990, as amended, or Section 202 of the Housing Act of 1959, as amended, and Program Obligations, on which the Owner is relying for financing of the Project.

B. The Firm Commitment is conditioned upon a working capital escrow being established and funded as indicated below. This requirement applies to both the profit-motivated and the not-for-profit Owner.

AGREEMENTS:

In consideration of the mutual promises and undertakings contained herein, and for the purpose of inducing HUD to provide the Capital Advance to the Owner, the parties acknowledge and agree as follows:

1. At or before initial endorsement of the Note by HUD for the Capital Advance, Owner shall deposit, or cause to be deposited subject to the control and order of HUD with a depository institution satisfactory to HUD in accordance with Program Obligations, the sum of \$ _____ (**Escrow**).
2. It is agreed that HUD at all times shall control the Escrow. 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, it will:
 - i. Cover shortfalls in interest, taxes, property insurance premiums, ground rents and assessments during construction after funds available under Form HUD-90167-CA, Capital Advance Agreement, are exhausted.

ii. Defray cost of initial marketing and rent-up. This includes: sales and advertising, model furnishings including furnishings for public areas, and equipment and supplies essential to initial rent-up, etc.

iii. Set up accruals for items due during the first operating year that project income is not expected to cover, including real estate taxes, permanent property insurance premiums, ground rents and assessments.

b. Final Release of Working Capital Deposit:

1. HUD will release any remaining funds to the Sponsor/Owner or, if applicable, the developer three years after completion if the project is not financially stressed and the project has reached final closing. The money belongs to the Sponsor/Owner or if applicable, developer, and is expended at their discretion.

2. HUD will continue to hold any remaining funds until the financial problems are resolved (e.g. has not reached sustaining occupancy, has poor liquidity or high payables, is operating at a deficit or is near default).

3. HUD will use the remaining balance of the working capital deposit to fund an operating deficit or cure a default before releasing the remaining funds to the Owner.

4. The Escrow may, at HUD's direction, be subject to immediate application to the Indebtedness if an Event of Default by Owner occurs 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.

OWNER:

HUD:

By _____

By _____

Print Name and Title

Print Name and Title

DEPOSITORY INSTITUTION:

By _____

Print 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