Escrow Agreement for Incomplete Construction

U.S. Department of Housing and Urban Development Office of Housing OMB Approval No. 2502-0598 (Exp. //)

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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.

		ent for Incom				is made as of				
					(L	₋ender),				
				(Borro	wer), whose	principal				
address is	5				, [and, i	f applicable,				
	("I	Depository In	stitution")].	(The definit	ion of any ca	f applicable, apitalized term				
or word used herein can be found in this Agreement, the Regulatory Agreement										
between E	Borrower and	HUD, the No	te, and/or the	Security Ins	strument, exc	cept that the				
term "Pro	gram Obliga	ations" mean	s (1) all applic	cable statute	es and any re	gulations				
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 s	subject to not	ice and comm	nent rulemakir	ng shall beco	ome effective	e only upon				
completio	n of the rulen	naking proces	s, and (2) all	current requ	irements in I	HUD				
handbooks and guides, notices, and mortgagee letters that apply to the Project, and all										
		es and amend								
•	,	notice and c		•		•				
•	•	rulemaking p				•				
	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 availa	ble on "HUD	CLIPS," at ww	w.hud.gov.							
			DECITALC							
			RECITALS:							
A. Borrov	ver is the owi	ner of a Projed	ct known as		loc	cated in the				
City/Coun	ty of	•	, State of		and further	identified as				
HÚD Proje	ect No.	·	·		_					
•										
B. HUD h	nas issued a l	irm Commitn	nent to insure	said Loan p	oursuant to §	of the				
National Housing Act, as amended, and Program Obligations, on which mortgage										
insurance	Borrower is	relying for fina	ancing of the F	Project.						

between Borrower and Lender, dated, which Building Loan Agreement Loan Agreement is by reference incorporated herein and made a part hereof.
D. Borrower has not yet completed certain Improvements required by the Building Loan Agreement. The incomplete portions of the Improvements ("Incomplete Construction Work") are listed, together with the estimated completion cost, in the attached Exhibit A. Borrower intends to complete the Incomplete Construction Work.
E. In order to induce HUD to insure the Loan in its maximum approved amount, and in order to induce Lender to advance the entire approved amount prior to completion of the Incomplete Construction Work, the parties acknowledge and agree as follows:
AGREEMENTS:
1. At or before final 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 and in accordance with Program Obligations, cash in the amount of \$ ("Deposit"). The amount of the Deposit, fees charged by Lender, and any interest earned on the Deposit, shall be governed by Program Obligations.
2. Borrower shall complete the Incomplete Construction Work on or before the
3. Borrower acknowledges that all work performed pursuant to this Agreement is subject to the labor standards contained in HUD 92554M, Supplementary Conditions of the Contract for Construction, or its replacement, as acknowledged from time to time by the original General Contractor in executing the Contractor's Prevailing Wage Certificate ("Certificate") on the back of HUD-92448, Contractor's Requisition, Project Mortgages, or its replacement. Borrower expressly agrees to be bound by the terms and provisions of the said Conditions and the Certificate. Prior to the release of any funds deposited hereunder, Borrower shall submit a Certificate duly executed by each contractor performing any of the work and dated subsequent to the completion of such work.

Lender, with the approval of HUD, will have the right, in its discretion, to complete the

4. In the event Borrower fails to complete the Incomplete Construction Work to the

satisfaction of HUD in the manner or within the time required by this Agreement,

Incomplete Construction Work, and to pay the cost thereof, including any related property and/or liability insurance coverage, and all costs and a reasonable fee of Lender, from the Deposit. 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 be done to effectuate the completion of the Incomplete Construction Work, and to apply the amount deposited under this Agreement 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 Project and take charge thereof, together with all materials, appliances, Fixtures and other improvements, and to call upon and require contractors to complete the Incomplete Construction Work. To the extent that Lender and/or its contractors complete the Incomplete Construction Work, such work remains subject to the labor standards referenced in Section 3 of this Agreement, and Lender shall obtain a Certificate duly executed by each contractor performing any of the work at Lender's direction and dated subsequent to the completion of such work. 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 Section. 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 Section. Lender will have the right to request, and HUD may grant approval of, an extension of the Completion Date. Lender will not be responsible for the completion of the Incomplete Construction Work beyond the expenditure of the amount available from the Deposit, and if that amount is insufficient, Lender will be under no obligation to proceed further with the Incomplete Construction Work or to demand additional sums from Borrower. 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.

- 5. With the exception of those amounts expended by Lender pursuant to Section 4 of this Agreement, any and all disbursements from the Deposit shall be made only upon prior written authorization by HUD, using a form prescribed by HUD, to meet any established cost for which the Deposit was intended. Any and all disbursements from the Deposit shall be made only upon prior written approval of HUD, with the exception of those amounts expended by Lender pursuant to Section 4 of this Agreement.
- 6. At the time as the Incomplete Construction Work is completed to the satisfaction of HUD, subject to HUD approval and provided that there does not then exist an Event of Default, any balance remaining on account of the Deposit shall be returned to, or as directed by, Borrower.
- 7. The Deposit may, at HUD's direction, be subject to immediate application to the Indebtedness if an Event of Default by Borrower occurs at any time.

8. This Agreement is made for the benefit of Lender and HUD, either of which shall have the right to enforce the provisions herein.

{The following statement must be included above each party's signature and appear on the same page as the signature.}

The signatory below certifies that all of the information provided in this Agreement and in any accompanying documentation is true, accurate, and complete, has been made, presented, and delivered for the purpose of influencing an official action of HUD, and may be relied upon by HUD as a true statement of the facts contained therein. The signatory acknowledges that the submission of any false, fictitious, or fraudulent statement, representation, or certification in this Agreement or on any accompanying documents may result in criminal, civil, and/or administrative sanctions, including fines, penalties, and/or imprisonment under applicable federal law.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

BORROWER	LENDER	
By:		
Print name and title	Print name and title	
DEPOSITORY INSTITUTION		
By:		
Print name and title		