

**Escrow Agreement for
Incomplete Construction
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: 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.

This Escrow Agreement for Incomplete Construction (“Agreement”) is made as of the _____ day of _____, 20____, by and between

_____ (Lender),

_____ (Borrower), whose principal address is

_____, [and, if applicable,

_____ (“**Depository Institution**”)]. (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. Borrower is the owner of a Project known as _____ located in the City/County of _____, State of _____ and further identified as FHA Project No. _____.
- B. HUD has issued a Firm Commitment to insure said Loan pursuant to § _____ of the National Housing Act, as amended, and Program Obligations, on which mortgage insurance Borrower is relying for financing of the Project.

- C. The Loan is subject to disbursement under a certain Building Loan Agreement between Borrower and Lender, dated _____, which Building 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 as further identified in this Agreement.
- E. Borrower has executed form HUD-91071-OHF, Escrow Agreement for Off-site Facilities, for any approved off-site improvements not yet completed.
- F. 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. \$_____, has been withheld by Lender from the proceeds of the Loan, and is hereby included in an Escrow Account (“Escrow”).
- 2. 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 \$_____ (“**Borrower Deposit**”), equal to any remaining equity requirement, into the Escrow. The amount of the Borrower Deposit, fees charged by Lender, and any interest earned on the Borrower Deposit, shall be governed by Program Obligations.
- 3. 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 \$_____ (“**Additional Deposit**”) into the Escrow. The amount of the Additional Deposit, fees charged by Lender, and any interest earned on the Additional Deposit, shall be governed by Program Obligations.
- 4. Borrower shall complete the Incomplete Construction Work on or before the _____ day of _____, 20__ (“**Completion Date**”). The Incomplete Construction Work shall be done and completed, free of liens, in accordance with the Drawings and Specifications referred to in the Building Loan Agreement and any change orders approved by HUD. Borrower further agrees to pay for all labor and material necessary to complete the Incomplete Construction Work. Borrower’s liability for the completion of the Incomplete Construction Work shall not be limited to the amount of the Escrow.
- 5. Borrower acknowledges that all work performed pursuant to this Agreement is subject to the labor standards contained in HUD-92554-OHF, 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-OHF, 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.

6. 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, Lender, with the approval of HUD, will have the right, in its discretion, to complete the 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 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 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 5 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. Subject to written HUD approval, Lender may extend 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 Escrow, 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.
7. With the exception of those amounts expended by Lender pursuant to Section 6 of this Agreement, any and all disbursements from the Escrow shall be made only upon prior written authorization by HUD, using a form prescribed by HUD, to meet any established cost for which the Escrow was intended.
8. At the time 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 Escrow shall be (a) used to pay for additional project capital expenses approved by Lender and HUD, within 12 months after the Completion Date, the funds for which shall continue to be subject to this Agreement, in addition to further cost certification if Program Obligations so require; and/or (b) Additional Deposit may be released to Borrower, or applied as directed by, Borrower.

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

Each signatory below hereby certifies under penalty of perjury 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 Agreement 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