

**Escrow Agreement for
Working Capital
Section 232**

**U.S. Department of Housing
and Urban Development**
Office of Residential
Care Facilities

OMB Approval No. 2502-0605
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Public reporting burden for this collection of information is estimated to average 0.5 hours 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. The information is being collected to obtain the supportive documentation that must be submitted to HUD for approval, and is necessary to ensure that viable projects are developed and maintained. The Department will use this information to determine if properties meet HUD requirements with respect to development, operation and/or asset management, as well as ensuring the continued marketability of the properties. Response to this request for information is required in order to receive the benefits to be derived from the National Housing Act Section 232 Healthcare Facility Insurance Program. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

Warning: Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §3729, 3802).

This ESCROW AGREEMENT FOR WORKING CAPITAL (Agreement) made this _____ day of _____, 20____, by and between _____, (**Lender**), whose principal address is _____, and _____, (**Borrower**), whose principal address is _____, [and if applicable, _____ (**Depository Institution**), whose principal address is _____], in connection with the U.S. Department of Housing and Urban Development (**HUD**) FHA 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 Loan insured by HUD and made by Lender. (The definition of any capitalized term or word used herein can be found in this Escrow Agreement for Working Capital, 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 HUD 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 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.

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 Borrower.

AGREEMENTS:

In consideration of the mutual promises and undertakings contained herein, and for the purpose of inducing the Lender to make and HUD to insure said Loan, the parties acknowledge and agree as follows:

1. At or before initial 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 in accordance with Program Obligations, the sum of \$ _____ (**Escrow**).

2. It is agreed that the Lender at all times shall control the Escrow. In the event the Project consists of new construction and the Firm Commitment so requires, the Escrow shall be split between a **Working Capital Amount** and a **Construction Contingency Amount** in accordance with Program Obligations; in situations other than new construction the Escrow shall consist solely of a **Working Capital Amount**. 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. The letter(s) of credit is attached for informational purposes only. It is expressly agreed and understood that HUD assumes no responsibility for reviewing the letter(s) of credit for sufficiency or enforceability.

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:

- (i) the cost of furniture, fixtures, and equipment for the Project that are not paid from Loan proceeds;
- (ii) the cost of marketing and leasing up the Project;
- (iii) for accruals during the course of construction, for interest, taxes, ground rents, property insurance premiums, year 2 mortgage insurance premium payment only, if the mortgage had not reached final closing and assessments, when funds available for these purposes under the Building Loan Agreement have been exhausted, and also for allocation to such accruals after completion of construction.

- b. With respect to the Construction Contingency Amount (if applicable):
 - (i) cost overruns;
 - (ii) HUD approved change orders.

4. Any unused balance remaining in the Escrow attributable to the Working Capital Amount will be released at Borrower's request and returned to Borrower at the later of twelve (12) months [**insert different number of months if required by Program Obligations**] after final endorsement and when the Project has demonstrated to HUD's satisfaction that the Project has achieved a debt service coverage (including Mortgage Insurance Premium) ratio of at least 1.0 for each month of six (6) consecutive months [**insert different number of months if required by Program Obligations**] based on all sources of Project income including ancillary income. For purposes of determining the debt service coverage ratio, any Operator Lease [Master Lease and/or sublease] shall be disregarded. The debt service coverage shall be determined based upon the operating results of the Project, rather than upon the operating results of the Borrower [Master Tenant] and/or Operator. Any unused balance remaining in the Escrow attributable to the Construction Contingency Amount (if applicable) will be released at Borrower's request and returned to Borrower at final endorsement.

5. The Escrow, when in the form of cash, shall be held by Lender or a depository institution satisfactory to the Lender and in accordance with Program Obligations. Lender may, at any time, for any reason or no reason, draw upon any letter of credit included in the Escrow and convert the same to cash, which cash shall then be held and disbursed pursuant to the terms of this Agreement. Fees charged by Lender and any interest earned on the Escrow shall be governed by Program Obligations.

6. 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.

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.

BORROWER:

LENDER:

By _____

By _____

Print Name and Title

Print Name and Title

DEPOSITORY INSTITUTION:

By _____

Print Name and Title

Attachment: Exhibit "A"

EXHIBIT "A"

Form of Letter of Credit