

**Escrow Agreement for
Debt Service Reserve
Section 232**

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

OMB Approval No. 2502-0605
(exp. 11/30/2022)

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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 DEBT SERVICE RESERVE (Agreement) made this _____ day of _____, 20____, by and between _____, (**Lender**), whose principal address is _____, and _____, (**Borrower**), 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 is being 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 Debt Service Reserve 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 the establishment and funding of a:
Check applicable boxes:

Short term debt service reserve fund made available for Project purposes as provided in this Agreement.

Long term debt service reserve fund made available for Project purposes as provided in this Agreement.

AGREEMENT:

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:

[ALTERNATIVE A: For use when a short-term debt service reserve fund is being established]

Short-Term Debt Service Reserve

1. At or before initial or final or initial/final endorsement of the Note by HUD for mortgage insurance, Borrower shall deposit, or cause to be deposited with Lender, funds in the amount of \$_____ (**Escrow**), consisting of _____ months of principal, interest and mortgage insurance premium (MIP) payments.

2. It is agreed that the Lender at all times shall control the Escrow, and that the funds in the Escrow may be released or allocated for the purposes indicated in this Agreement and for no other purpose without the prior written approval of HUD. The Escrow shall take the form of *[specify as applicable when a short-term escrow is being established]*:

- 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. Disbursements from the Escrow may be authorized monthly with written approval from the Lender and HUD to make the debt service payments after the start of amortization. Any unused balance remaining in the Escrow will be released at Borrower's request and returned to Borrower after (a) no less than twelve months following Final Endorsement and the date on which the (b) the Project has maintained the average underwritten debt service coverage ratio (DSCR) of _____ (including MIP) for twelve consecutive months {or insert different number of months if required by Program Obligations} after Final Endorsement, and (c) no default exists with respect to the Loan. Lender must provide HUD with an analysis and back-up financial documentation along with a certification that the Project has met the foregoing requirements prior to release of the unused balance. For purposes of determining the debt service coverage ratio any Master Lease and/or Operator Lease [Master Lease and/or sublease] shall be disregarded. The debt service coverage ratio shall be determined based on the operating results of the Project, rather than upon the operating results of the Borrower [Master Tenant] and/or Operator.

[ALTERNATIVE B: For use when a long-term debt service reserve fund is being established]

Long-Term Debt Service Reserve

1. Funding shall be completed as follows:

[Insert specific funding provisions required by the firm commitment.]

2. It is agreed that the Lender at all times shall control the Escrow, and that the funds in the Escrow may be released or allocated for the purposes indicated in this Agreement and for no other purpose without the prior written approval of HUD. As determined in the Firm Commitment, the Escrow shall take the form of *[specify as applicable when a long-term escrow is being established]*:

- cash, or
- mortgage loan proceeds.

3. The Escrow must be maintained for the term of the Loan. Disbursement from the Escrow must be initiated by a request from Lender or Borrower to the Director of the Office of Residential Care Facilities (“ORCF”) or its successor. ORCF will review the performance of the Project, the current financial and operational conditions of the Borrower, open ORCF and State compliance issues, and other relevant issues, information and documents in order to determine whether or not a withdrawal from the Escrow is warranted. HUD shall issue a written approval of any release, which shall be conditioned on restoring the balance to the initial Escrow amount within the timeframe allotted in HUD's written approval. Additionally:

- a. *[Insert specific release provisions or other conditions required by the firm commitment].*
- b. Borrower understands and agrees that distributions of Surplus Cash are prohibited at any

time the Escrow balance is less than the initial Escrow amount.

- c. The balance, if any, remaining in the Escrow shall be released to Borrower upon payment in full of the Loan.

The following paragraphs apply to both short-term and long-term debt service reserves:

4. The Escrow is intended to provide the Borrower with a reserve to meet debt service payments on the Loan, or other Project needs as approved by HUD in writing, as necessary to safeguard the Project's financial viability. Funds in this Escrow shall be used exclusively for payment of principal, interest, and mortgage insurance premiums (MIP) in connection with the Loan, and/or to fund project escrows for insurance premiums, real estate taxes, special assessments and/or MIP, or other Project needs as determined by HUD and approved in writing.

5. The Escrow shall be held by Lender 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. Lender may, from time to time, without the approval of HUD, release to Borrower any amounts held in the Escrow that are in excess of the initial Escrow amount ("**Excess Funds**"). The Lender shall have no obligation to release Excess Funds to the Borrower if there exists a default or Event of Default under the Loan.

7. 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 Debt Service Reserve as of the day and year first above written.

BORROWER:

LENDER:

By: _____

By: _____

Print Name and Title

Print Name and Title

EXHIBIT "A"

Form of Letter of Credit