

Escrow Agreement for Incomplete Construction

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

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This **Escrow Agreement for Incomplete Construction (Agreement)** is made ~~is effective~~ as of the ____ day of _____, 20____, by and ~~among~~ between _____ (Lender) ~~and~~, _____ ~~(Borrower)~~, whose principal address is _____, and _____ (Contractor), whose principal address is _____ [and, if applicable, _____ (Depository Institution)]. (The definition of any capitalized term or word used herein can be found in this ~~Escrow Agreement for Incomplete Construction~~, the Regulatory Agreement between Borrower and HUD, the Note, and/or the Security Instrument.)

RECITALS:

~~A. Borrower is constructing or substantially rehabilitating a project~~ Borrower is the owner of a Project known as _____ located in the City/County of _____, State of _____ and further identified as HUD Project No. _____ ~~with the proceeds of a Loan from Lender.~~

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.

~~B. Pursuant to a commitment dated _____, HUD has insured Loan advances under Section _____ of the National Housing Act, as amended, and Program Obligations.~~

~~GD. Borrower~~ Contractor has not yet completed certain Improvements required by the ~~Building Loan Agreement~~ Construction Contract. The incomplete portions of the Improvements ("Incomplete Construction Work") are listed, together with the estimated completion cost, in the attached Exhibit A. ~~Borrower~~ Contractor intends to complete the Improvements-Incomplete Construction Work.

~~DE.~~ 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 ~~Improvements/Incomplete Construction Work~~, ~~Borrower/Contractor~~ agrees to provide security for their completion, based on the estimate in Exhibit A and whatever additional amount is required by HUD.

AGREEMENTS:

In consideration of the premises, and for other good and valuable consideration, the parties acknowledge and agree as follows:

1. At or before final endorsement of the Note by HUD for mortgage insurance, Borrower or Contractor 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, in an account that is fully insured by the United States of America, cash in the amount of \$ _____ (“Deposit”). Any interest earned on the Deposit shall accrue to the account.

12. Borrower/Contractor shall complete the ~~Improvements/Incomplete Construction Work~~ on or before the _____ day of _____, 20__ (“Completion Date”). The ~~work/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 the Construction Contract. ~~Borrower/Contractor~~ further agrees to pay for all labor and material necessary to complete the ~~Improvements/Incomplete Construction Work~~.

23. — Borrower/Contractor acknowledges that all work performed pursuant to this ~~Escrow Agreement for Incomplete Construction (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/Contractor~~ 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/Contractor~~ shall submit a Certificate duly executed by each ~~and every~~ contractor performing any of the work and dated subsequent to the completion of such work.

4. ~~Borrower has deposited with Lender the cash amount of \$ _____, receipt of which is acknowledged by Lender, to be held and disbursed as follows:~~

~~a. In the event Borrower completes the Improvements in accordance with the cited requirements on or before the Completion Date, and there is no default under the Security Instrument, Lender, upon receipt of written approval from HUD, will return the sum deposited hereunder to Borrower, without interest.~~

~~b.~~ In the event HUD determines that Borrower has Contractor failed to complete the Improvements/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 Improvements/Incomplete Construction Work, and to pay the cost thereof, including all costs and a reasonable costs/fee of Lender incurred by Lender, from the Deposit, as a result of such failure, from the amount deposited under this Agreement. For this purpose, Borrower Contractor irrevocably appoints Lender as its attorney-in-fact, with full power of substitution, to do and perform for ~~it, Borrower, Contractor,~~ in its Contractor's name, place and stead, all matters and things which Lender ~~shall in its judgment will~~ deem necessary and proper to be done to effectuate the completion of the Improvements/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. ~~This power of attorney shall provide Lender with full and sufficient authority, and t~~The orders given by Lender as attorney-in-fact for ~~Borrower/Contractor~~ shall be good and sufficient vouchers for all payments made by virtue thereof. In this connection, ~~this power of attorney shall provide~~ Lender ~~with shall have~~ 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, as attorney-in-fact for Borrower, and~~ to call upon and require contractors to complete the Improvements/Incomplete Construction Work. To the extent that Lender and/or its contractors complete the Improvements/Incomplete Construction Work, such work remains subject to the labor standards referenced in Section 23 of this Agreement, and Lender shall obtain a Certificate duly executed by each contractor performing any of the work and dated subsequent to the completion of such work. ~~In the event Lender completes the Improvements in accordance with this Agreement, any unexpended balance of the sum deposited with Lender will be returned to Borrower, without interest, subject to the rights of Lender and HUD under the Loan Documents. 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 to 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 Improvements/Incomplete Construction Work beyond the expenditure of the amount deposited/available from the Deposit, and if that amount is insufficient, Lender will be under no obligation to proceed further with the Improvements/Incomplete Construction Work or to demand additional sums from ~~Borrower/Contractor or Borrower~~. The power granted herein is coupled with an interest, and ~~Borrower/Contractor and Borrower~~ acknowledges and agrees that all powers granted herein to Lender may be assigned to HUD.

5. Disbursements from the Deposit must be authorized 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. The Deposit, if made from Loan Proceeds, shall be subject to immediate application to the Indebtedness if an Event of Default occurs at any time.

~~7. e.~~ This Agreement is made for the benefit of Lender and HUD, either of which shall have the right to enforce the provisions herein.

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

~~Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument 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.~~

BORROWER

LENDER, ~~acting as DEPOSITORY~~

By: _____

By: _____

Print name and title

Print name and title

CONTRACTOR

DEPOSITORY INSTITUTION

By: _____

By: _____

Print name and title

Print name and title

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.

