

**Escrow Agreement For Latent Defects**

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

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~~THIS AGREEMENT~~ is effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between \_\_\_\_\_, Lender, and \_\_\_\_\_, Borrower. (The definition of any capitalized term or word used herein can be found in this Escrow Agreement for Latent Defects, the Regulatory Agreement between Borrower and HUD, and/or the Security Instrument.)

~~This ESCROW AGREEMENT FOR LATENT DEFECTS (“Agreement”)~~ made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, (“Lender”), whose principal address is \_\_\_\_\_, (“Borrower”), whose principal address is \_\_\_\_\_, and \_\_\_\_\_, (“Contractor”), whose principal address is \_\_\_\_\_, [and if applicable, \_\_\_\_\_, (“Depository Institution”), whose principal address is \_\_\_\_\_]. (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).

RECITALS:

~~A. Borrower has completed construction of a Project identified as HUD Project No. \_\_\_\_\_ with the proceeds of a Loan from Lender. Borrower is the owner of a Project known as \_\_\_\_\_, located in the City/County of \_\_\_\_\_, State of \_\_\_\_\_, and further identified as HUD Project No. \_\_\_\_\_.~~

~~B. Borrower is required to furnish a guarantee against latent defects, faulty workmanship and defective materials as described herein following the date of final completion of the Project; and~~

~~CB. The eDate of final eFinal Completion, which is defined as the date the HUD representative signs the final HUD Representative’s Trip Report (form HUD-95379), provided that the trip report is subsequently endorsed by the construction manager, of the Project was \_\_\_\_\_, 20\_\_\_\_.~~

C. Contractor shall remedy or cause to be remedied all defects in the work due to faulty materials or workmanship, defective materials or damage to the Project resulting from such defects, which defects or damage become apparent within twelve (12) months (“Latent Defects”) after the Date of Final Completion. Contractor further agrees to pay for all labor and materials necessary to complete the construction and remedy said Latent Defects. Contractor’s liability for the completion of the construction and remedying the Latent Defects shall not be limited to the amount of the Deposit.

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#### AGREEMENTS:

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

1. BorrowerContractor herewith deposits with Lender, or subject to the control and order of Lender, with a Depository Institution satisfactory to Lender, and Lender hereby acknowledges receipt of, the sum of \$\_\_\_\_\_ (FundDeposit), which is an amount equal to two and one-half percent (2 1/2 %) of the total amount of the Construction Contract (HUD-92442M) to be retained for a period of fifteen months from the date of final completion, The Deposit shall be in the form of (i) a cash escrow equal to two and one-half percent (2 1/2 %) of the total amount of the Loan; or (ii) an irrevocable, unconditional letter 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; or (iii) a surety bond, from a surety on the accredited list of the U.S. Treasury, equal to ten (10) percent of the cost of construction or substantial rehabilitation. The Fund is held by Lender under the Contract of Insurance for and on behalf of Borrower.
2. The FundDeposit shall be maintained by Lender to guarantee against Latent Defectsdefects in the construction due to faulty materials or workmanship, defective materials or damage to the project resulting from such defects, which defects or damage become apparent within one year after the date of final completion. The FundDeposit mayshall be used for the correction of of such defects or damageLatent Defects, as may be required by either Lender or HUD, in the event Borrower fails to make such corrections.
3. BorrowerContractor covenants and agrees on demand of either Lender or HUD to remedy or cause to be remedied all Latent dDefects in construction due to faulty workmanship, defective materials, or damage to the Project resulting from such defects, within 60 days of notification by Lender or HUD.
4. BorrowerContractor acknowledges that all work performed pursuant to this Escrow Agreement for Latent Defects is subject to the labor standards contained in Supplementary Conditions of the Contract for Construction (HUD-92554M), or its

replacement, as acknowledged from time to time by the original General Contractor in executing the Contractor's Prevailing Wage Certificate on the back of Contractor's Requisition, Project Mortgages (HUD-92448) ("Certificate"). BorrowerContractor expressly agrees to be bound by the terms and provisions of the said Conditions and the Certificate. Prior to the release of any portion of the FundDeposit, 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.

5. ~~Lender shall maintain the Fund separate from any escrow that may have been provided to assure completion of any incomplete construction items. The Fund shall be disbursed as follows:~~

~~a.~~—In the event BorrowerContractor fails to comply with the provisions of Paragraph 3 of this Agreement, Lender, with the approval of HUD, shall have the right, in its discretion, and/or option to proceed to correct to complete the correction of all said Latent dDefects in construction and pay the cost thereof, including all the costs and a reasonable fee of Lender, from the FundDeposit. For this purpose, BorrowerContractor hereby irrevocably authorizes and empowers appoints Lender to do and perform inas its name and attorney-in-fact, with full powers of substitution, to do and perform for Contractor, in Contractor'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 said repairswork, and to apply the FundDeposit to the payment of debts, expenses, costs and charges of any kind contracted or incurred. ~~This warrant of attorney shall be Lender's full and sufficient authority in connection therewith. The orders given by Lender as attorney-in-fact for BorrowerContractor shall be good and sufficient vouchers for all payments made by virtue thereof. Borrower hereby irrevocably authorizes and empowers Lender~~ 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 of all materials on the Project and in the name of Borrower, as its attorney-in-fact, thereof, together with all materials, appliances, Fixtures, and other improvements and to call upon and require contractors to complete the work. do that repair work which is their responsibility. To the extent that Lender and/or its contractors complete said repairs, such work remains subject to the labor standards referenced in Section 4 of this Escrow Agreement for Latent Defects, 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. 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 not be responsible for the performance of 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 work or to demand additional sums. The power granted herein is coupled with an interest, and Contractor and Borrower acknowledge and agree that all powers granted herein to Lender may be assigned to HUD.

~~b.~~—~~The entire Fund or, if any sums were expended in accordance with the above paragraph, any balance remaining therein, shall be returned to Borrower~~

~~upon the expiration of the time designated above unless there is a default under the Security Instrument.~~

- ~~c. In the event Borrower completes the repairs in the time period specified at paragraph 3 above, or no defects become apparent within one year after completion of the Project and there is no default under the Security Instrument, Lender shall upon written approval of HUD, return to Borrower the amount of the deposit.~~

~~6. Disbursements from this Deposit must be authorized by HUD, using a form prescribed by HUD, to meet any established cost for which the Deposit was intended. d. Any and all disbursements from the Fund Deposit shall be made only upon the prior written approval of HUD, with the exception of those amounts expended by Lender pursuant to Section 5 of this Agreement.~~

~~7. 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 Contractor, upon the later of the following:~~

~~(i) fifteen (15) months after the Date of Final Completion, or~~

~~(ii) such time as all Latent Defects have been corrected to the satisfaction of HUD.~~

~~8. The Deposit, when in the form of cash, shall be held by Lender, or a Depository Institution satisfactory to the Lender, in accordance with Program Obligations, in an account that is fully insured by the United States of America. Lender may, for purposes of this Agreement, draw upon any letter of credit included in the Deposit and convert the same to cash, which cash shall then be held and disbursed pursuant to the terms of this Agreement. Any interest earned on the Deposit shall accrue to the account.~~

~~9. If the Deposit is made from Loan proceeds, the Deposit shall, at HUD's direction, be subject to immediate application to the Indebtedness in the Event of Default by Borrower under the Security Instrument at any time.~~

~~In the event the Security Instrument is assigned to HUD at any time during which the Fund has a balance remaining therein in the form of an unconditional letter of credit, Borrower hereby authorizes Lender to draw the remaining balance of said letter of~~

~~credit in cash, if so required by HUD, and to deliver such cash to HUD as required pursuant to paragraph 7 hereof,~~

~~7. If there is an Event of Default by Borrower under the Security Instrument and an assignment of the Security Instrument to HUD, the entire Fund or balance remaining therein shall be paid to HUD together with an assignment of all rights hereunder granted to Lender. In such event, HUD may apply the Fund to sums due under the Note. In the event Lender elects to foreclose the Security Instrument in lieu of assigning it to HUD, Lender may apply the Fund to sums due under the Note.~~

~~8. Borrower's liability for the correction of defects or damage shall not be limited by the amount of the Fund.~~

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

BORROWER:

LENDER:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Print Name and Title

CONTRACTOR:

DEPOSITORY INSTITUTION:

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Print Name and Title

Attachment: Exhibit "A"

**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.**

EXHIBIT "A"

Form of Letter of Credit