

DEPARTMENT OF VETERANS AFFAIRS
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING COMMISSIONER
ESCROW AGREEMENT FOR POSTPONED OFFSITE IMPROVEMENTS
(Joint HUD - VA Form)

INSTRUCTIONS: Submit to HUD or VA in duplicate. Complete paragraph 6 to show establishment of cash escrow or acceptance of a Commercial Letter of Credit. Attach a copy of Letter of Credit for HUD use. The applicable introductory section of Paragraph 6 shall be completed.

THIS AGREEMENT, made this _____ day of _____,

by and between _____, a _____,
(Builder/Seller) (Described as corporation, partnership, etc.)

(hereinafter called *Builder/Seller, party of the first part*), and _____, a corporation
(Escrow Agent)

of _____, qualified as an Approved Mortgagee by the _____,
Federal Housing Commissioner, or as a Department of Veterans Affairs Supervised Lender (*hereinafter called Agent*),

party of the second part, and _____, a corporation of _____,
(Lender)

_____ (*hereinafter called Lender*), party of the third part.

WHEREAS, Builder/Seller has constructed, is now constructing, or will construct _____ dwelling houses
(Number)

in _____, identified below and
(Name of Subdivision, County and State)

WHEREAS, the Federal Housing Commissioner and/or the Secretary of Veterans Affairs (*hereinafter called Federal Agencies*) have issued certain HUD commitments or VA Certificates of Reasonable Value in respect to certain properties and improvements within said subdivision, and

WHEREAS, this Agreement is made for the benefit of the Federal Housing commissioner and the Secretary of Veterans Affairs, and

WHEREAS, Builder/Seller, due to conditions beyond its control, at this time is unable to complete certain of said improvements as set forth below, and

WHEREAS, Federal Agencies have established certain appraisal values relating to the dwellings to be constructed by Builder/Seller, such values being predicated on completion of all off-site improvements including but not limited to street improvements, curbs, drainage, sidewalks, and all other improvements as described in the plans, specifications, and other data filed with Federal Agencies, and

WHEREAS, Lender proposes to make certain mortgage loans on those properties identified below, if Federal Agencies, in reliance upon this agreement, will insure or guarantee said mortgages, notwithstanding that Builder/Seller at this time is unable to complete certain of the improvements on which Federal Agencies based appraisal values.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That for the purpose of inducing Federal Agencies to insure or guarantee the mortgages on the said dwellings prior to the completion of the work set forth below, to assure satisfactory completion of said work, and in consideration of the other premises herein set forth, the parties hereto covenant and agree as follows:

1. Whenever any provision of this agreement requires the consent, release or other action of Federal Agencies the parties hereto agree that such provision will require the approval of both the Federal Housing Commissioner and the Secretary of Veterans Affairs; Provided, That either Agency may give a disclaimer of interest indicating that it has no interest in this agreement or the properties which are the subject thereof and thereafter the parties to the agreement will be entitled to deal solely with the remaining interested agency.
2. Builder/Seller agrees to complete or cause to be completed the improvements listed below on or before _____ in accordance with the terms and conditions of any of the following requirements as they may be applicable:
 - a. Federal Housing Commissioner Commitments for Insurance.
 - b. Department of Veterans Affairs Certificate of Reasonable Value.
 - c. Federal Housing Commissioner Subdivision Requirements
 - d. Department of Veterans Affairs Subdivision Requirements
 - e. HUD Minimum Property Requirements
 - f. Department of Veterans Affairs Minimum Property Requirements.
 - g. Plans and specifications as filed with and approved by Federal Agencies.
 - h. Requirements of local governmental authorities having jurisdiction provided that if the requirements of the Federal Agencies and the requirements of the local governing authority are not in conformity, the higher requirement of the two shall govern and be applicable.

3. Builder/Seller agrees to promptly notify Federal Agencies and Agent when construction of such work is commenced and further agrees to furnish reasonable progress reports to Federal Agencies or Agent upon request.

¹ The term "approved mortgagee" does not include institutions approved by HUD as "loan correspondent mortgagees."

² A VA "supervised lender" may not act as Escrow Agent with respect to HUD insured loans unless it is also qualified as a HUD "approved Mortgagee." A HUD "approved Mortgagee" may act as Escrow Agent with respect to VA guaranteed loans notwithstanding that such "approved mortgagee" is not qualified as a VA "supervised lender."

4. Builder/Seller agrees to pay for all labor and material necessary for completion of said work and that said work is to be finished and completed free and clear of all liens, encumbrances, assessments, or unpaid obligations resulting from completion of said work.

5. Builder/Seller agrees that all improvements listed below and which are subject to approval of any local governmental authority shall be installed in a manner acceptable to the local governmental authorities and that dedication and acceptance for permanent maintenance by said governmental authority is a condition precedent to acceptance by Federal Agencies and release of the escrow created by paragraph 6 of this agreement.

6. A. Cash Escrow:

Builder/Seller herewith deposits with Agent and Agent acknowledges the receipt thereof, the sum of \$ _____ which sum shall hereinafter be referred to as the "Fund" and which sum shall be held and disbursed by Agent. Agent agrees that if it is an institution required by the Federal Housing Commissioner to segregate mortgage escrow funds that it will deposit said Fund in a special custodial bank account to be held separate and apart from its general assets.

B. Irrevocable Letter of Credit:

The Builder/Seller herewith furnishes the Agent, and Agent acknowledges the receipt thereof, and irrevocable Letter of Credit (Number _____) drawn upon the _____,

a commercial banking institution, for the account of _____ identified as Builder/Seller herein, which said Letter of Credit is payable to Agent in the amount of \$ _____ and the terms of which are by reference thereto hereby incorporated herein and made a part hereof and which letter shall be drawn on terms of which are by reference thereto hereby incorporated herein and made a part hereof and which letter shall be drawn on by the Agent in accordance with its terms, and which said Letter of Credit shall hereinafter be referred to as the "Fund."

The Agent further acknowledges that the Agent has examined the said Letter of Credit and as a result of such examination has determined that the said Letter of Credit is a valid and binding obligation of the said issuing bank in accordance with the terms of said Letter of Credit; and

Agent further acknowledges the receipt of opinions of the General Counsel for the issuing bank and the General Counsel of Agent, which are attached hereto and made a part hereof, which opinions state that the Letter of Credit has been examined, that the issuance of said Letter of Credit is within the authority of the issuing bank, and that the Letter of Credit is valid and binding obligation of the issuing bank.

a. Agent agrees that upon completion by Builder/Seller of a part or all of the construction required below in accordance with the requirements of paragraph 2, of this agreement and upon Builder/Seller presenting to "Agent" satisfactory evidence to assure that no mechanics' or materialmen's liens are outstanding or can attach on account of such work and improvements, Agent shall, upon receipt of written approval of such completed work by Federal Agencies, as below, return said "Fund" of \$ _____, or part thereof without interest to Builder/Seller.

b. In the event Builder/Seller fails to complete or cause to be completed the said work as required by paragraph 2 of this agreement, and fails to deliver to Agent the written approval of said work by Federal Agencies, Agent shall, upon receiving a joint written request from Federal Agencies, proceed to complete the said work and pay the cost thereof, including all costs and charges of Agent, from monies derived from the "Fund" deposited with it pursuant to paragraph 6 of this agreement and for this purpose Builder/Seller, and in its name, place and stead; all matters and things which Agent shall in its judgment deem necessary and proper to be done to effectuate the completion of the said work and to apply monies derived from said "Fund" to the payment of debts contracted or incurred for work done or for materials furnished therefor, or either, in and about said work and for all expenses, costs and charges in connection therewith, and for Agent so doing, this warrant of attorney shall be its full and sufficient authority and the orders so given and signed by Agent as attorney-in-fact shall be good and sufficient vouchers for all payments made by virtue thereof. Further, in such event Builder/Seller hereby irrevocably authorizes and empowers Agent to enter into and upon the said premises and take charge thereof, together with all materials and appliances thereunto belonging, and thereupon in the name of Builder/Seller, as its attorney-in-fact, to call upon and require the several contractors to proceed to complete the said work and do whatsoever in Agent's judgment it shall deem necessary to be done to secure the completion of the said work according to the requirements of paragraph 2 of this agreement and in accordance with the instructions of Federal Agencies.

c. Agent agrees that in the event the work is completed by Agent in accordance with the provisions hereof and written approval of said work is given by Federal Agencies, any unexpended balance of the sum of money deposited with the Agent, pursuant to paragraph 6 of this agreement, shall thereupon be returned by Agent to Builder/Seller, without interest.

d. Builder/Seller agrees that in the event the sum herewith deposited proves insufficient for any reason to effectuate completion of said work and improvements by Agent, the Agent may make demands upon Builder/Seller to deposit any additional sum needed to effect its completion and Builder/Seller hereby agrees to supply to Agent any and all sums needed over and above the amount of this deposit to complete said work and improvements.

e. Builder/Seller agrees that it is personally liable to purchasers of such dwellings for the satisfactory completion of the improvements below free and clear of all liens and that this undertaking is additional to and not in lieu of Builder/Seller's express covenant with Agent.

7. It is the intention of the parties to this agreement that Agent shall act solely at all times on instructions from Federal Agencies with respect to the said sum deposited with it by Builder/Seller and for so acting Builder/Seller hereby expressly releases and relieves Agent of any and all liability or claims of any nature. Agent shall have a prior lien on said fund, however, for any and all costs or expenses incurred by it (including court costs and reasonable attorneys' fees) by reason of acting as depositary of the said fund.

8. The parties to this agreement do further agree that whenever Federal Agencies are involved, that the Federal Housing Commissioner will be represented by the Area Manager/Service Office Supervisor, or his/her representative who has jurisdiction over the properties involved and the Department of Veterans Affairs will be represented by the Director of the Department of Veterans Affairs Office having jurisdiction, or the Loan Guaranty Officer at such office.

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| SCHEDULE OF IMPROVEMENTS TO BE POSTPONED AND COST OF COMPLETION <i>(IMPORTANT - See Instructions on Reverse)</i> | VA CASE NO. <hr/> FHA CASE NO. |
|--|---------------------------------------|

| Line | ITEM | COST | MINIMUM OF 1/2 OF COST | TOTAL ESCROWED |
|------|--|------|------------------------|----------------|
| 1 | | \$ | \$ | \$ |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | | | | |
| 9 | | | | |
| 10 | | | | |
| 11 | TOTAL COST OF POSTPONED IMPROVEMENTS | \$ | | |
| 12 | ONE-HALF OF AMOUNT SHOWN IN LINE 11 (Minimum) | | \$ | |
| 13 | TOTAL AMOUNT ESCROWED (Sum of Lines 11 and 12) | | | \$ |

| LOT NO. (A) | ALLOCATION BY LOT OF TOTAL COST OF POST-PONED IMPROVEMENTS (B) | ALLOCATION BY LOT OF TOTAL ESCROWED (C) | LOT NO. (A) | ALLOCATION BY LOT OF TOTAL COST OF POST-PONED IMPROVEMENTS (B) | ALLOCATION BY LOT OF TOTAL ESCROWED (C) |
|----------------|---|--|----------------|---|--|
| | | | | | |
| TOTAL | | | TOTAL | | |

IN WITNESS WHEREOF, the parties hereto have hereunto caused these presents to be executed on their behalf and their corporate seals affixed the day and year first above written.

Party of the First Part:

Date _____ (Builder/Seller)

By _____
Title:

Title:

Party of the Second Part:

Date _____ (Agent)

By _____
Title:

Title:

Party of the Third Part:

Date _____ (Lender)

By _____
Title:

Title:

INSTRUCTIONS

REQUEST FOR INSPECTION - If partial disbursement of escrowed funds is desired, VA and HUD shall be notified when construction of each scheduled item is completed and ready for inspection.

OTHER REQUIREMENTS - Submit to VA and HUD two copies of evidence that the streets have been dedicated to the local authority having jurisdiction and have been accepted for continuous maintenance by it.

BASIS OF DISBURSEMENT - Escrowed funds may be disbursed on the basis of 90 percent of the amounts set forth for any scheduled item of the work upon notification by VA and HUD that the work in the scheduled item has been acceptably completed. The amount equal to the withheld 10 percent may be disbursed after the acceptable completion of all the work and when the other requirements and conditions of the Escrow Agreement are fully met. VA and HUD reserve the right to refuse, or to delay, acceptance of any work which is subject to damage in executing other work or by delay in completing such other work.