

ESCROW AGREEMENT FOR POSTPONED EXTERIOR ONSITE IMPROVEMENTS

(This agreement is authorized by law (38 U.S.C. 210). While you are not required to execute this agreement, your cooperation is needed to enable the veteran-purchaser(s) to obtain immediate occupancy of the home(s).)

This agreement made this _____ day of _____, by and between _____, (hereinafter called "Seller") party of the first part, _____, (hereinafter called "Lender") party of the second part, and _____, (hereinafter called "Escrow Agent") party of the third part;

WITNESSETH:

Whereas the above named Seller has constructed, is constructing, or selling certain residential housing unit(s) in _____, County of _____, State of _____ identified as (Name of Project, if applicable) _____, and has obtained a Certificate(s) of Reasonable Value from the Department of Veterans Affairs on the housing units in the project in the respective amount(s) as follows:

| | | | | |
|----------------|----------------|----------------------------------|------------------------|--------------------|
| <i>Address</i> | <i>Lot No.</i> | <i>Name of Veteran-Purchaser</i> | <i>R.V. Est. By VA</i> | <i>Sales Price</i> |
|----------------|----------------|----------------------------------|------------------------|--------------------|

and

Whereas said Certificates of Reasonable Value were obtained to enable the Seller to sell said properties to veterans eligible to purchase same with the proceeds of the loan(s) to be made under Title 38, United States Code, and the Regulations issued by the Secretary of Veterans Affairs thereunder; and

Whereas said Title and Regulations require that the amount of the loan to be obtained by the veteran (exclusive of the amount of the funding fee, if any, included in the loan) for the purchase of such property or for the cost of construction, repairs or alterations, may not exceed the reasonable value as determined by the Department of Veterans Affairs; and

Whereas the designated appraiser(s) have established the aforesaid Reasonable Value estimates predicated on the completion of certain offsite and exterior onsite improvements as described in the plans, specifications, and other data on file with the Department of Veterans Affairs; and

Whereas, Seller, due to conditions beyond its control, at this time is unable to complete certain of said improvements as set forth below, but intends to complete said improvements in accordance with the plans and specifications on file with the Department of Veterans Affairs; and

Whereas the said Lender on account of the necessary postponement of the aforesaid onsite improvements will not complete actual disbursement of the loan(s) to the above mentioned eligible veteran(s) until after completion of the said improvement(s) and will thereby be unable to obtain certificates(s) of guaranty with respect thereto, with the consequence that the purchaser(s) will be unable to obtain immediate occupancy of the home(s).

NOW, THEREFORE, for and in consideration of the premises hereinabove set forth and in order to make possible the immediate delivery of possession of said property(s) to the veteran-purchaser(s) hereinabove named and at the same time assure the satisfactory completion of said postponed improvement(s), and in order to permit the Department of Veterans Affairs to issue guaranty based on the entire amount of the loan(s) to be disbursed by the said Lender on behalf of the said veteran-purchaser(s), the parties hereto agree as follows:

1. The Seller covenants and agrees to complete the improvement(s) enumerated below on or before the _____ day of _____, or such subsequent date as may hereafter be approved, in writing, by the Department of Veterans Affairs, the said work to be completed by the Seller and in accordance with the requirements of the Certificate of Reasonable Value, the plans and specifications, VA Minimum Property Standards and the requirements of the local governmental authorities having jurisdiction. If the VA requirements and the local requirements are not in conformity, the higher requirements of the two shall govern.

2. The Seller agrees to pay for all labor and material necessary to complete the work and improvements.

3. The Seller additionally agrees to be personally liable to the veteran-purchasers for the satisfactory completion of the work free and clear of all liens, and that this undertaking is additional to and not in lieu of the Seller's express covenant with the Lender.

4. A. Cash Escrow

The Seller herewith deposits with the Escrow Agent, and the Escrow Agent acknowledges receipt of the sum of (\$) _____ which said sum shall be held by the Escrow Agent and disbursed as follows:

(1) In the event the Seller completes the work and improvements in full accordance with the plans and specifications referred to above and upon Seller presenting to the Escrow Agent satisfactory evidence to assure that no mechanics' liens are outstanding or can attach on account of such work and/or improvements, the Escrow Agent shall thereupon pay to the Seller the sum deposited, or such lesser sum as the Loan Guaranty Officer may have approved, without interest, provided the Escrow Agent is in receipt of advice from the Loan Guaranty Officer of the Department of Veterans Affairs that the improvements have been satisfactorily completed.

(2) In the event the Seller fails to complete all or any part of the improvements specified herein in full accordance with the said plans and specifications on or before the date specified in Paragraph 1 hereof, the Lender, with the approval of the Loan Guaranty Officer of the Department of Veterans Affairs, shall have the right to enter into a contract with any third party for the completion of such part of the work as the Seller has failed adequately to perform. In such event the Escrow Agent shall pay over, at the joint direction of the Lender and the Loan Guaranty Officer, all or any part of the escrowed funds in such amounts and to such persons as may be specified in such joint direction. The Seller hereby releases the Lender from any liability whatsoever to pay over or account for all or such part of the funds deposited hereunder as may be expended at the joint direction of the Lender and the Loan Guaranty Officer as provided herein.

(3) In the event the Lender, pursuant to the provisions of paragraph (2) hereof, proceeds to complete any of the uncompleted improvements, the Seller hereby irrevocably authorizes and empowers the Lender, its agents, employees, contractors and laborers to enter into and upon said premises for the purpose of carrying such work and improvements to completion and further authorizes and empowers the Lender to take charge of the property affected and all lands belonging to the Seller appurtenant thereto and which are a part of the total project as described and proposed in the loan application, loan report, plans and specifications, or other papers on file with the Department of Veterans Affairs and all equipment, material and appliances of the Seller located thereon and in the name of the Seller as an attorney-in-fact, to call upon and require all persons under contract with the Seller to do the work and supply the materials necessary for the completion of the work and improvements to perform under their contracts. Subject to the prior approval of the Department of Veterans Affairs, the Lender in so doing is empowered to make such changes, alterations, additions, or modifications as it deems to be necessary or expedient. Any unexpended balance of the sum deposited herewith after completion of any work or improvements undertaken pursuant to paragraphs (2) and (3) hereof and the approval thereof by the Department of Veterans Affairs shall be paid by the Escrow Agent to the Seller without interest, at the joint direction of the Lender and the Department of Veterans Affairs.

(4) In the event the sum herewith deposited proves insufficient for any reason to effectuate completion of said work and improvements by the Lender, the said Lender shall make demands upon the Seller to deposit the additional sum needed to effect its completion and the Seller hereby agrees to supply to the Lender any and all sums needed over and above the amount of this deposit to complete said work and improvements.

B. Commercial Letter of Credit

In Lieu of cash escrow, the Seller herewith furnishes the Escrow Agent, and said Agent acknowledges the receipt thereof, an irrevocable Letter of Credit (No. _____) drawn upon the _____

_____, a commercial banking institution, for the account of _____ identified as _____

Seller herein, which said Letter of Credit is payable to said 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 by the Agent in accordance with its terms, and which said Letter of Credit shall hereinafter be referred to as the "Fund".

The Escrow Agent further acknowledges that the Escrow 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

Escrow Agent further acknowledges the receipt of opinions of the General Counsel of the issuing bank and the General Counsel of Escrow 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 a valid and binding obligation of the issuing bank.

(1) Escrow Agent agrees that upon completion by Seller of a part or all of the construction in accordance with the plans and specifications referred to above and upon Seller presenting to "Escrow Agent" satisfactory evidence to assure that no mechanics' liens are outstanding or can attach on account of such work and improvements, Escrow Agent shall, upon receipt of written approval of such completed work from the Loan Guaranty Officer, return said "Fund" of \$ _____ or part thereof without interest to Seller.

(2) In the event Seller fails to complete or cause to be completed the improvements specified herein, and fails to deliver to Escrow Agent the written approval of said work by the Department of Veterans Affairs, Escrow Agent shall, upon receiving written approval from the Loan Guaranty Officer, proceed to complete the said work and pay the cost thereof, including all costs and charges of Escrow Agent, from monies derived from the "Fund" deposited with it pursuant to paragraph 4B of this agreement and for this purpose Seller hereby irrevocably authorizes and empowers Escrow Agent to do and perform for it, the Seller, and in its name, place and stead, all matters and things which Escrow 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 Escrow Agent so doing, this warrant of attorney shall be its full and sufficient authority and the orders so given and signed by Escrow Agent as attorney-in-fact shall be good and sufficient vouchers for all payments made by virtue thereof. Further, in such event Seller hereby irrevocably authorizes and empowers Escrow 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 the Seller, as its attorney-in-fact, to call upon and require the several contractors to proceed to complete the said work and to do whatsoever, in Escrow Agent's judgment, it shall deem necessary be done to secure the completion of the said work in accordance with the plans and specifications referred to above subject to the prior approval of the Department of Veterans Affairs.

(3) Escrow Agent agrees that in the event the work is completed by Escrow Agent in accordance with the provisions hereof and written approval of said work is given by the Department of Veterans Affairs, any unexpended balance of the sum of money deposited with the Escrow Agent, pursuant to paragraph 4B of this agreement, shall thereupon be returned by Escrow Agent to Seller without interest.

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

(5) Seller agrees that it is personally liable to purchasers of such dwellings for the satisfactory completion of the improvements free and clear of all liens and that this undertaking is additional to and not in lieu of the Seller's express covenant with the agent.

5. It is the intention of the parties that this Agreement is made for the benefit of the Lender and of the veteran (owner) subject to approval of the Department of Veterans Affairs either of which shall have the right to enforce the provisions hereof, and that the Escrow Agent in the execution thereof shall act solely on the request and instructions of the Lender and the Department of Veterans Affairs as specified herein with respect to all sums deposited hereunder; and for so doing the Seller hereby expressly releases and relieves the Escrow Agent of any and all liability or claim of any nature.

6. The Escrow Agent shall have a prior lien on the funds deposited herewith for any costs, including court costs and reasonable attorney's fees, which may be incurred by it consequent upon its being made a party to any legal or equitable proceeding which is brought by any of the parties hereto, the Department of Veterans Affairs, or any veteran(s) named above concerning the disposition of the funds held hereunder.

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 _____

(Seller)

By _____
Title:

Title:

Party of the Second Part:

Date _____

(Lender)

By _____
Title:

Title:

Party of the Third Part:

Date _____

(Agent)

By _____
Title:

Title:

INSTRUCTIONS

REQUEST FOR INSPECTION - If partial disbursement of escrowed funds is desired, VA or FHA, whichever agency made the previous inspections, shall be notified when construction of each scheduled item is completed and ready for inspection.

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 that the work in the scheduled item has been acceptably complete. 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 reserves the right to refuse, or to delay, acceptance of any work which is subject to damage in executing other work by delay in completing such other work.

PRIVACY ACT NOTICE: These agencies will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (for example: authorized release of information to Congress when requested for statistical purposes) identified in the VA system of records, 55VA26, Loan Guaranty Home, Condominium and Manufactured Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records - VA, published in the Federal Register. Your obligation to respond is required in order to process the request for postponed exterior onsite improvements.

RESPONDENT BURDEN: This information is needed to help the veteran purchaser obtain occupancy of a home prior to the completion of exterior on-site improvements. Title 38, U.S.C., 3710(b)5, authorizes collection of this information. We estimate that you will need an average of 30 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB webpage at www.reginfo.gov/public/do/PRAMain. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.
