

**Escrow Agreement for
Proceeds from Partial
Release of Collateral**
Section 242

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

OMB Approval No. 2502-0602
(Exp. XX/XX/XXXX)

Public Reporting Burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, QDAM, U.S. Department of Housing and Urban Development, Washington, DC 20410-5000. Do not send this completed form to the above address. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. This information is completed and submitted to HUD by Borrowers and Lenders to establish an escrow for the proceeds from the sale and release of partial real estate collateral under the FHA-insured mortgage. This form cites all the supportive documentation which must be submitted to HUD for withdrawal of funds from the escrow. The authority for this function can be found in the National Housing Act and in the Regulatory Agreements between the Secretary of HUD and the borrower of each HUD related project. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802; 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

This ESCROW AGREEMENT FOR THE SALE AND RELEASE OF REAL ESTATE

COLLATERAL (“Agreement”) made this ____ day of _____, 20____, by and between _____, (“**Lender**”), whose principal address is _____, and _____, (“**Borrower**”), whose principal address is _____, [and if applicable, _____ (“**Depository Institution**”), whose principal address is _____], in connection with HUD Project No. _____, located in the City/County of _____, State of _____, which Project [has been, is being, or will be] [rehabilitated, purchased or 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 Agreement, 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 the Secretary 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://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips, or a successor location.

WITNESSETH:

WHEREAS, Borrower has requested, and Lender has agreed, to release a portion of the real estate encumbered by the Mortgage (the “Partial Release”) and HUD and Lender have approved the Partial Release; and

WHEREAS, as a condition to approving the Partial Release, HUD requires that the proceeds of the sale of the real estate subject to the Partial Release be deposited in an escrow account for disbursement as set forth in Section 3 of this Agreement (the “Escrow Account”); and

WHEREAS, Borrower is willing to have the Escrow Account funded as required by HUD pursuant to this Agreement, and Lender is willing to hold the Escrow Account in its role as lender under the Note.

NOW, THEREFORE, in consideration of the premises and the sum of TEN DOLLARS (\$10.00) in hand paid by each of the parties hereto to the other (the receipt and sufficiency of which by each of the parties hereto from the other is hereby acknowledged), the parties hereto hereby covenant and agree as follows:

- 1. Deposits.** Upon the execution of this Agreement, Borrower shall deposit with Lender cash in the amount of \$_____ (the “Escrow Funds”). The Escrow Funds shall be held by Lender in an account for custodial accounts (the “Escrow Account”) as required by HUD and the [Government National Mortgage Association] and the Escrow Funds will be released pursuant to the terms of this Agreement.
- 2. Escrow Period.** The Escrow Funds shall be held by Lender from the date hereof until the earlier of (a) the disbursement of all Escrow Funds or (b) termination of this Agreement pursuant to Section 4 below.
- 3. Disbursements.** Escrow Funds shall only be used to pay down the principal of the Note or to pay for or reimburse Borrower for the costs of those capital projects and/or equipment purchases that relate to the Project (each a “Permitted Use”). Escrow Funds shall not be disbursed or used for any other purpose other than Permitted Uses and shall not be disbursed without prior written approval by Lender and HUD. If the Borrower uses disbursed Escrow Funds for anything other than the requested Permitted Use, an event of default shall be declared under the Mortgage. In connection with any request by Borrower for disbursements from the Escrow Account for capital projects and/or equipment purchases, Borrower shall provide contractor requisitions, invoices, and/or copies of cancelled checks and such other documentation and information as Lender and HUD may require.
- 4. Release of Escrow.** Any balance remaining in the Escrow Account shall be released to Borrower immediately upon the payment in full of the outstanding balance of the Note, and this Agreement shall be terminated simultaneously therewith without prior written consent of Lender and prior written notice to Borrower.

5. **Assignment.** Borrower grants a security interest in and assigns to Lender and HUD all of Borrower's interest in the Escrow Funds to secure all of Borrower's obligations under the Mortgage. Upon a default of the Mortgage and/or assignment thereof to HUD, the Escrow Funds may be applied to the outstanding balance of the Note, subject to any prepayment restrictions contained in the Note. Neither Lender nor HUD shall have any obligation or duty to disburse or approve disbursement of the Escrow Funds to cure any default under the Note or the Mortgage.
6. **Hold Harmless.** Borrower agrees to hold Lender harmless and to indemnify Lender against any loss, liability, expense (including reasonable attorneys' fees and expenses), claim, or demand arising out of or in connection with the performance of Lender's obligations in accordance with the provisions of this Agreement, except to the extent caused by the negligence or willful misconduct of Lender. The foregoing indemnities in this paragraph shall survive the resignation of Lender or the termination of this Agreement.
7. **Existing Obligations.** Nothing contained in this Agreement shall in any manner whatsoever alter, impair, or affect the obligations of Borrower, or relieve Borrower of any of its obligations to make payments and perform all of its other obligations required under the Note, the Mortgage, that certain Regulatory Agreement between Borrower and HUD dated as of _____, and recorded _____, in Deed Book _____ at Page _____ in the Recorder's Office, or any other document entered into in connection with the Note (collectively, the "Loan Documents"), as all such documents/instruments may be amended from time to time.
8. **Conflicts.** In the event of any conflict or inconsistency between this Agreement and the Loan Documents, rules, regulations and administrative procedures of HUD, the Loan Documents and the rules, regulations, and administrative procedures of HUD shall govern and be controlling.
9. **Successors and Assigns Bound.** This Agreement shall be binding upon Borrower and Lender and their respective successors and assigns and shall inure to the benefit of and may be enforced by Lender and its successors, transferee and assigns. Borrower shall not assign any of its rights and obligations under this Agreement without the prior written consent of Lender and HUD.
10. **No Third-Party Beneficiary.** This Agreement is intended solely for the benefit of Lender and HUD and their respective successors and assigns, and no third-party shall have any rights or interest in the Escrow Funds or this Agreement. Nothing contained in this Agreement shall be deemed or construed to create an obligation on the part of Lender or HUD to any third-party nor shall any third-party have a right to enforce against Lender or HUD any right that Borrower may have under this Agreement.
11. **No Agency or Partnership.** Nothing contained in this Agreement shall constitute Lender or HUD as a joint venturer, partner, or agent of Borrower, or render Lender or HUD liable for any debts, obligations, acts, omissions, representations, or contracts of Borrower.

- 12. Notices.** All notices given under this Agreement shall be in writing to the other party, at the address and in the manner set forth in the Loan Documents.
- 13. Severability.** The invalidity, illegality, or unenforceability of any provision of this Agreement pursuant to judicial decree shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall remain in full force and effect.
- 14. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the jurisdiction in which the Project is located.
- 15. Execution.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN TESTIMONY WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names as of the date hereinabove first written.

BORROWER:

[HOSPITAL]

By: _____

[SIGNATURES CONTINUED ON NEXT PAGE]

LENDER:

[LENDER]

By: _____

[SIGNATURES CONTINUED ON NEXT PAGE]

HUD:

SECRETARY OF HOUSING AND URBAN DEVELOPMENT
acting by and through the
FEDERAL HOUSING COMMISSIONER

By: _____

Name: _____
Authorized Agent