

Completion Assurance Agreement

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

OMB Approval No. 0000-0000
(Exp. 00/00/00)

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This COMPLETION ASSURANCE AGREEMENT made this _____ day of _____, 20____, by and between _____ (**Contractor**), whose principal address is: _____, and _____ (**Borrower**), whose principal address is: _____, and _____ (**Lender**), whose principal address is: _____, [and if applicable, _____ (**Depository Institution**), whose principal address is: _____] (**Agreement**). (The definition of any capitalized term or word used herein can be found in this Completion Assurance Agreement, the Regulatory Agreement between Borrower and HUD, the Note, and/or the Security Instrument.)

RECITALS:

- A. Contractor and Borrower have entered into a Construction Contract dated _____, 20____ (**Construction Contract**), providing for the construction of a Project described therein, known as HUD Project No. _____, and a copy of the Construction Contract being on file with HUD; and
- B. Construction of the Project is to be financed by a Loan made to Borrower by Lender, which Loan is secured by a Security Instrument, to be insured by HUD, pursuant to and under the provisions of the National Housing Act, as amended; and
- C. Lender is unwilling to make Loan advances and HUD is unwilling to insure the Loan unless Contractor shall first furnish proper assurance to Borrower and to Lender for the performance of the obligations of Contractor under the Construction Contract, including, but not limited to:
- (1) completion of the Project in accordance with Drawings and Specifications referred to in the Construction Contract;
 - (2) completion of the Project free and clear of any liens, claims or encumbrances whatsoever, except for the lien of the Security Instrument;

(3) payment of all mechanics and laborers employed in the construction of the Project at wages prevailing in the locality of the Project as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended;

(4) satisfaction of any loss, damage, expense or claim that Borrower or Lender may suffer or sustain through the failure of Contractor to fulfill the provisions of (1), (2), or (3) above or through the failure of Contractor to fulfill all obligations under the Construction Contract.

AGREEMENT:

In consideration of the mutual promises and undertakings hereinafter contained, and for the purpose of inducing HUD to insure advances of the Loan during construction, the parties hereto on behalf of themselves, their successors or assigns respectively, undertake and agree that:

1. Contractor has deposited with Lender, or if Lender so elects, with a depository institution satisfactory to Lender, a Completion Assurance Fund , in the amount of _____ Dollars (\$_____)

(Deposit), to secure or indemnify Borrower or Lender, as the case may be, for any expenses, loss, or damage suffered or sustained as the result of any default by Contractor in the performance of the Construction Contract; it being understood and agreed that the Deposit shall at all times be under the control of Lender or its assigns and is deposited in the form of (specify as applicable):

cash; or

one or more unconditional irrevocable letter(s) 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;

2. Contractor shall complete the construction, free of all liens, on or before the Project Substantial Completion Deadline as that term is defined in the Construction Contract. Contractor shall correct any defects due to faulty materials or workmanship which appear within one year from Project Substantial Completion as that term is defined in the Construction Contract (**Latent Defects**). 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 Latent Defects shall not be limited to the amount of the Deposit. The time frame for Latent Defects shall be extended one year from the Date of Final Completion for the completion of work first performed after Project Substantial Completion or portions of the work not specifically included in a Certificate of Substantial Completion (defined as any executed Permission to Occupy in HUD-92485). The "**Date of Final Completion**" shall be 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. The Latent Defects time frame for all work performed after the Date of Final Completion shall be extended one year from the date any such work is completed.

3. The Deposit shall be held by Lender subject to disbursement at the sole discretion of HUD as follows:

- (a) to Contractor or party making such Deposit during the course of construction, as may be deemed necessary by Lender and with prior written approval of HUD;
- (b) to Borrower such portion of the Deposit as deemed necessary by HUD to recover any overpayment to Contractor;
- (c) to pay or cause to be paid any amounts due with respect to the performance of Contractor obligations or to reimburse any party on account or amounts paid by such party on account thereof;
- (d) any balance remaining in account of Deposit may be returned to, or as directed by, Contractor or party making such Deposit when: (i) final endorsement of the Note for mortgage insurance by HUD has occurred, and (ii) Latent Defects assurances that are compliant with Program Obligations have been provided in the form of a cash escrow, letter of credit, or a surety bond from a surety on the accredited list of the U.S Treasury, in an amount equal to two and one-half percent (2 ½ %) of the total amount of the Construction Contract (**Latent Defects Deposit**), which shall be held as part of the Deposit. Said sum may be used for the correction of Latent Defects in the event Contractor fails to make such corrections;
- (e) any balance remaining in account of the Latent Defects Deposit shall be returned to, or as directed by, Contractor or party making such Deposit, upon the later of, (i) fifteen (15) months after Project Substantial Completion, (ii) fifteen (15) months after the Date of Final Completion for completion of any work performed after Project Substantial Completion, (iii) fifteen (15) months after completion of any work performed after the Date of Final Completion, or (iv) at such time as all Latent Defects have been corrected to the satisfaction of HUD.

4. Notwithstanding any of the provisions herein contained, it is expressly understood and agreed by all the parties thereto that in the event of a default by Contractor in any of its obligations under the Construction Contract, the entire Deposit or balance remaining therein may, at the option of Lender and HUD, be paid to HUD together with an assignment of all rights hereunder granted to Lender by Borrower. Contractor and Borrower hereby consent to the transfer of the rights of Lender hereunder by assignment in the event that any other Lender or Lenders should become the holder of the Security Instrument.

5. In the event Lender assigns the Security Instrument to HUD at any time during which the Deposit has a balance remaining therein in the form of an unconditional irrevocable letter of credit, Contractor authorizes Lender to draw the remaining balance of said letter of credit in cash, if so required by HUD, and deliver such cash within forty-five (45) days after the assignment is filed for record to HUD to be held in accordance with the terms of this Completion Assurance Agreement.

6. It is understood and agreed that in the event the Deposit is held by a depository institution other than Lender, that said depository institution is not charged with any duty or responsibility of Lender related to the performance of or compliance with any agreements between any of the parties hereto other than that of paying over the Deposit as directed in writing by Lender.

7. The Deposit, when in the form of cash, shall be held by Lender or a depository institution satisfactory to the Lender and 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.

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

IN WITNESS WHEREOF, the parties hereto have duly executed this Completion Assurance Agreement 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