

**ESCROW AGREEMENT
CLEVELAND RESTORATION SOCIETY
HERITAGE HOME PROGRAM**

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This Escrow Agreement (“Agreement”) dated _____, 20__ is entered in by and among _____ (“Owner”), _____ (“Contractor”), and the Cleveland Restoration Society (“CRS”).

RECITALS:

- A. Owner is the owner of the home located at _____ (the “Property”).
- B. In order for Owner to complete the Work (as defined below), _____ (“Lender”) has deposited funds in the amount of \$_____ with CRS pursuant to a loan to Owner made by Lender pursuant to the Heritage Home Program (“Loan”). All funds deposited with CRS pursuant to this Agreement are referred to herein as the “Escrow Funds”.

NOW THEREFOR, the parties agree that the Escrow Funds shall be disbursed upon the following terms and conditions:

1. ESCROW ADMINISTRATOR. CRS shall be the escrow administrator for the Owner and is authorized to collect, hold, and to disburse the Escrow Funds upon the direction of the Owner.

a. **ESCROW DEPOSITS:**

- 1) CRS shall be liable for only Escrow Funds and instruments actually deposited and received by it for the purposes of this escrow and shall have a lien on all funds deposited with it for the purpose of securing any fees, costs, or other charges incurred by it for the performance of any obligations pursuant to this Agreement.
- 2) Any cash or checks required by the terms hereof and received by CRS may be deposited to the credit of CRS’s escrow account in any depository which it may select. All disbursements shall be made from such account.
- 3) CRS may commingle the Escrow Funds with other funds held pursuant to the Heritage Home Program and invest the Escrow Funds in its sole discretion. Any interest or profits earned on the Escrow Funds shall be the property of CRS and Owner waives any claim for any interest or profits from the funds deposited in escrow. CRS shall not be liable for the payment of any funds in the event of the insolvency or suspension of payments by any such depository, or any other loss or damage which may occur by reason of such deposit.
- 4) Any and all funds, documents, or property deposited by parties other than Owner shall be subject to the instructions of such depositing parties.

b. **ESCROW FEE.** Owner shall be charged with the Escrow Fee of \$350.00 per loan payable to CRS. This fee shall be financed as part of the Loan.

c. **LIMITATION OF LIABILITY.** The duties, responsibilities and obligations of CRS shall be limited to those expressly set forth in this Agreement and no implied duties, responsibilities or obligations shall be read into this Agreement against CRS. CRS may rely upon, and shall be indemnified by the parties hereto in acting or refraining from acting upon, any written notice, instruction, statement,

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Owner Initials

Contractor initials

request, waiver, order, judgment, certification, consent, receipt or other paper or document furnished to it (not only as to genuineness, but also as to its due execution and validity, the genuineness of signatures appearing thereon and as to the truth and accuracy of any information therein contained), which it in good faith believes to be genuine and signed or presented by the proper person. CRS shall not be liable to anyone for any error of judgment, or for any act done or step taken or omitted to be taken by it for any mistake of fact or law, or for anything which it may do or refrain from doing in connection with or in the administration of this Agreement, unless and except to the extent the same constitutes bad faith or willful misconduct on the part of CRS. CRS shall not be liable for any loss or damage resulting from its delay in performance of its obligations pursuant to this Agreement if such delay was due to force majeure.

- 1) Owner and Contractor each, jointly and severally, agree to release, indemnify and defend CRS from and against any and all loss, cost, damages or expenses, including attorney's fees, resulting from or in relation to the Work or concerning the execution and performance of this Agreement.
 - 2) CRS is only providing Heritage Home Program Administration services to Owner.
 - 3) CRS may rely on information provided to it on loan questionnaires.
 - 4) Owner shall be solely responsible for selection of the Contractor(s).
 - 5) The Contractor shall be solely responsible for all aspects of the Work, including, without limitation, all design and structural requirements, the selection and use of all materials in such work, and compliance with all applicable codes, laws, and regulations.
 - i. If the Owner self-performs the Work or a portion of the Work (without a Contractor), they shall be solely responsible for all aspects of the Work they perform, including, without limitation, all design and structural requirements, the selection and use of all materials in such work, and compliance with all applicable codes, laws, and regulations.
 - 6) CRS's obligations shall be limited to those expressly set forth in this Agreement.
 - 7) CRS HEREBY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES CONCERNING THE MINIMUM DESIGN STANDARDS PREPARED BY CRS OR THE WORK UNDERTAKEN IN CONNECTION WITH SUCH STANDARDS, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTY OF HABITABILITY OR FITNESS FOR PARTICULAR PURPOSE.
 - 8) Owner shall rely solely on any selected Contractor(s) for any and all representations or warranties related to the Work.
- d. AGREEMENT APPROVAL: This Agreement must be approved by CRS before it becomes effective. This Agreement, executed in multiple counterparts, shall be construed under the law of the State of Ohio, and may be modified or amended only by a written instrument executed by both Owner and Contractor and accepted by CRS.

2. PERMITS AND LICENSES.

- a. All Work shall be performed in compliance with the applicable local codes and requirements.
- b. Contractor Responsibility: Contractor (and its subcontractors) shall register and obtain all licenses and permits necessary for the execution and completion of the Work within the Municipality, including:
 - 1) Contacting the Municipality to find out which jobs require a permit
 - 2) Securing all necessary permits prior to beginning the Work
 - 3) Scheduling and being present for all necessary inspections

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_____ Owner Initials
_____ Contractor initials

- 4) Providing copies of permits and inspection reports to Owner and CRS.
- c. Owner Responsibility: Owner shall confirm that appropriate permits are secured and any inspections of the completed Work required by the Municipality are performed.
 - 1) If the Owner self-performs the Work or any portion of the Work (without a Contractor), Owner shall obtain all required licenses and permits from the Municipality prior to beginning said Work and all necessary inspections for said Work.
 - 2) NOTE: Upon discovery that work requiring a permit has been completed without one, the Owner will be at risk of voiding this Agreement and losing the low interest rate being subsidized by the Cuyahoga County Treasurer through CRS. (See Paragraph 9, "Termination").

4. SCOPE OF WORK. The scope of work shall include all labor and materials necessary and incidental to the completion of the project, or subcontracted portion of the project, as outlined in the DETAILED DESCRIPTION OF PLANNED REHABILITATION (Form 3) of the Heritage Home Program Loan Application completed by the Owner along with any appendices and attachments (herein known as the "Work").

5. CONTRACT SUM.

- a. Owner or CRS, out of the Escrow Funds as directed by the Owner, shall pay the Contractor for the performance of all Work described in, and in accordance with, the Contract Documents, subject to additions and deductions by any Change Order, the contract sum of \$_____ (the "Contract Sum").
- b. The Contract Sum is based on the cost of completing the Work specified by the Contract Documents; all federal, state, municipal and other taxes imposed by law on labor, services, materials, equipment or other items furnished or used by the Contractor in connection with the Work; all general conditions and overhead and profit costs; and all charges or fees of every kind and nature, including, without limitation, all license, inspection, certification and permit fees in connection with the Work.
- c. CRS reserves the right to refuse to distribute payment for any work not outlined in the original Contract Sum and/or Scope of Work that is not authorized by a written Change Order.
- d. If Owner elects to self-perform the Work or a portion of the Work, CRS will only pay reimbursements for materials purchased in relation to the Work. CRS will not reimburse Owner the cost of labor to self-perform any portion of the Work.

6. ENUMERATION OF CONTRACT DOCUMENTS.

- a. For purposes of this Agreement, the contract documents attached hereto (herein after known as "Contract Documents") are made a part of this Agreement by this reference, and what is required by any one, shall be as binding as if required by all:
 - 1) LOAN SUBSIDY APPLICATION (Forms 1 and 2)
 - 2) DETAILED DESCRIPTION OF PLANNED REHABILITATION (Form 3) of the Heritage Program Loan Application
 - 3) AGREEMENT BETWEEN OWNER AND CLEVELAND RESTORATION SOCIETY (Form 4)
 - 4) CRS STANDARD CONSTRUCTION CONTRACT signed by Owner and Contractor.
 - 5) Written estimate provided by Contractor and approved by Owner.
 - 6) Any and all relevant blueprints, plans, and/or bid specifications prepared or procured by Owner and/or Contractor

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- 7) CRS MINIMUM DESIGN STANDARDS, provided in print upon request and published online at www.heritagehomeprogram.org
 - 8) LEAD BASED PAINT NOTIFICATION AFFIDAVIT OF OWNER signed by Owner
 - 9) CRS ESCROW AGREEMENT – Signed by Owner, Contractor, and CRS
 - 10) CRS PRECONSTRUCTION REPORT – Signed by Owner and Contractor
 - 11) CRS PROCEED ORDER – Signed by Owner, Contractor, and CRS
 - 12) Contractor Certificates of Insurance
 - 13) Building permits
 - 14) Any and all Change Orders - Signed by Owner and the Contractor and reviewed by CRS for general compliance with CRS Minimum Design Standards.
 - 15) Municipality inspection reports
 - 16) Release of Liens and Final Lien Waiver executed by Contractor
- b. The Owner shall provide the executed Contract Documents to CRS in a timely matter as set forth herein (see Paragraph 9, “Termination”).
 - c. INTERPRETATION: Owner and Contractor acknowledge that they may sign additional agreements prepared by the Contractor. If so, **Owner and Contractor agree that in the event of any conflict between this Agreement and any other contract or agreement, the terms and provisions of this Agreement shall prevail** regardless of which agreement or contract was executed first and regardless of any other provision of either agreement related to resolving conflicts between them.
 - d. SEPARATE AGREEMENTS: Any separate agreement for any extra work that Owner desires to undertake and have completed by the Contractor while on the premises that is NOT authorized by a Change Order is a separate and distinct arrangement between the Owner and the Contractor and not part of this Agreement. No Escrow Funds may be used to pay for work performed under such separate agreement.

7. CONTRACT REVISIONS AND CHANGE ORDERS.

- a. All revisions to the Work, including any increase or decrease in the Contract Sum, shall be authorized by a written Change Order, signed by the Contractor, accepted by Owner, and reviewed by CRS for general compliance with CRS Minimum Design Standards.
- b. If a Change Order is approved, the Contract Sum and the Schedule shall be adjusted accordingly.
- c. The costs or credit to the Owner due to a Change Order shall be determined by agreement of Owner, Contractor, and CRS.
- d. Any and all agreements not reviewed and signed as indicated above shall be considered null and void in regards to this Agreement.

8. PAYMENT. CRS, upon the Owner’s direction and approval, shall pay the Contractor within five (5) working days of being billed by the Contractor for work completed during the project time frame, provided that all of the “Conditions for Payment,” as defined below, have been met.

a. CONDITIONS FOR PAYMENT:

- 1) Completed Work: The amount due for Work performed shall be payable only after the Work appears to be satisfactorily completed, as determined by Owner.
- 2) Invoices: Submit copies of all Contractor Invoices for the amount due.
- 3) Receipts: Submit copies of all material receipts to be reimbursed.
 - i. NOTE: Owner may be reimbursed for materials purchased, but CRS will only issue payments from the Escrow Funds after receipts for purchased materials are

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received, or CRS may issue payments from Escrow Funds directly to material suppliers on a case by case basis upon receipt of a detailed invoice.

- 4) Permits: Submit a copy of each and every permit with evidence that the Work performed under each permit has passed inspections.
 - 5) Release of Liens: Submit satisfactory release of liens or claims for liens by the Contractor, sub-contractors, laborers and material suppliers for the completed Work installed or delivered materials.
- b. PARTIAL PAYMENT:
- 1) Partial payments will be granted according to job size and complexity, at the discretion of the Owner.
 - 2) Deposits: Deposits or down payments paid before Contractor's performance of the Work begins may not exceed ten (10) percent of the Contract Sum per Section 4722.04 of the Ohio Revised Code.
 - 3) First Payment: The most a Contractor may bill for job-specific materials before their performance of the Work begins is thirty (30) percent of the Contract Sum unless otherwise approved by CRS.
 - 4) **CRS will issue NO MORE than one escrow payment every two weeks.** Additional payment requests may be subject to a \$100 surcharge.
 - 5) Contractor shall assemble payment requests and submit all required documentation (see Paragraph 8.a, "Conditions for Payment").
- c. **RETAINAGE: A ten percent (10%) retainage on all payments for labor will be withheld,** when disbursing Escrow Funds on a partial payment, and is not released until the Final Payment, (as defined below) is approved by Owner and received by CRS.
- d. FINAL PAYMENT: The balance of the Contract Sum shall be paid to the Contractor in one lump payment within five (5) business days of being billed for final payment, provided that CRS has received the following:
- 1) Certificate of Completion signed by the Owner (Form 5)
 - 2) Evidence the Work has been inspected and fully approved by the Municipality to the extent that such inspection and approval is required by law.
 - 3) Final walk-through by CRS staff is completed.
 - 4) Receipt of Final Lien Waiver executed by Contractor.
- e. WITHHELD OR CANCELLED PAYMENTS:
- 1) The Owner or the Municipality may withhold approval of Work performed, and, if so withheld, is required to give to Contractor a valid reason in writing, within ten (10) working days.
 - 2) CRS is empowered to hold Contractor payments in escrow to protect Owner, as Owner reasonably determines following review with CRS, against all liens, damages, and claims until all liens, damages, and claims are effectually satisfied, discharged, and cancelled.
 - 3) In the event that a party requests a check to be cancelled, and the check has already been issued and sent to the Owner or Contractor through the US Postal Service, CRS will comply with the request provided that the requesting party pay CRS's cost to cancel the check (which cost is currently \$34.00).
 - 4) Provided the terms of this Agreement are met, CRS will not withhold Contractor payments, unless restrained by order of court, and in so doing CRS shall not be or become liable to either the Owner or Contractor for its failure or refusal to comply with conflicting or adverse claims or demands.

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_____ Contractor initials

f. MECHANICS' LIENS:

- 1) If any mechanic's lien shall be filed against the Property for work claimed to have been done for, or materials claimed to have been furnished in connection with, the Work, the Contractor shall, within ten days after written notice thereof is received, and at the Contractor's sole cost and expense, have the same canceled and discharged of record by payment, bonding or otherwise.
- 2) If the Contractor fails to have any such lien canceled and discharged as aforesaid, Owner shall have the right, but not the obligation, to perform the same and charge all costs and expenses, including reasonable attorney's fees and disbursements incurred by Owner in connection therewith, to the Contractor, which costs and expenses shall be immediately payable by the Contractor.

9. TERMINATION.

a. GENERAL.

- 1) All of the parties to this Agreement, jointly and severally, agree to release, indemnify and defend CRS from and against any and all loss, cost, damages or expenses, including attorney's fees, resulting from the termination of the Agreement.
- 2) CRS shall be entitled to deduct all expenses and charges incurred in the escrow from funds deposited. The parties agree that such expenses and charges may be apportioned to them in a manner which CRS considers equitable, and CRS's decision in that regard will be binding and conclusive upon them.
- 3) If the Owner violates provisions of this AGREEMENT or the AGREEMENT BETWEEN OWNER AND CRS, CRS will notify the Lender, who may choose to terminate the county subsidized low-interest rate and revert the related Loan back to fair market interest rates.

b. TERMINATION FOR CAUSE – DEPOSIT OF FUNDS OR DOCUMENTS.

- 1) If one or more of the parties to this escrow have failed to deposit on or before fifteen (15) days from the date expressly set forth herein or within fifteen (15) days after written notice from CRS the additional funds or documents necessary to perform the conditions and requirements of this agreement, then the non-defaulting party may, upon written demand, terminate this Agreement, or CRS at its option may terminate this Agreement, and all funds and documents will then be returned to the parties depositing them.
- 2) Absence of written demand shall be construed as an extension of time.

c. TERMINATION FOR CONVENIENCE. At any time, the Contractor and the Owner may terminate this Agreement through a Change Order signed by both and sent to CRS. If this Agreement is so terminated, the Contractor shall be paid a pro rata portion of the Contract Sum based upon the percentage of satisfactorily completed work, less payments of compensation previously made, as approved by the Owner.

10. ARBITRATION CLAUSE.

- a. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall initially be mediated by CRS with the objective of having the Contractor complete the work set forth in the Contract Documents to the complete satisfaction of the Owner.
- b. The result of such mediation shall be reflected in a Change Order signed by the Owner and the Contractor and reviewed by CRS.
- c. In the event, CRS is not able to mediate a resolution of the controversy or claim, then it will be settled by arbitration in accordance with the rules of the American Arbitration Association, and

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judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

- d. Filing, hearing, postponement, processing, and administrative fees will be shared equally by the Owner and Contractor.
- e. CRS shall not be a party to such arbitration. In addition, such arbitration proceeding shall NOT be combined with any arbitration related to the Agreement between the Owner and CRS or any arbitration related to any agreement or contract between the Owner and Contractor.
- f. The parties hereby agree that in the event that CRS is required to respond to any court action or arbitration without fault of CRS, then CRS shall be reimbursed for all its costs and expenses (including reasonable attorney fees), all of which shall be charged to the appropriate parties in accordance with Paragraph 9.a.2 above.

11. CRS REVIEW OF THE WORK. CRS shall have no obligation to Owner or Contractor to review any portion of the Work performed by the Contractor pursuant to this Agreement but may agree to do so upon the request of either the Owner or the Contractor. The following limitations apply to any CRS review of the Work:

- a. CRS does NOT provide full home inspections or permit inspections and may request further inspection of the Work by the local building code official.
- b. CRS review of the Work consists of a visual assessment only and is limited to visibly evident conditions existing at the time of the review. Concealed or latent defects and deficiencies may exist.
- c. Identification or evaluation of potentially hazardous materials, including but not limited to radon gas, asbestos, lead paint, mold, or chemicals, is NOT included in CRS review of the Work.
- d. Any verbal or written reports or advice provided by CRS do NOT constitute or imply any guarantee or warranty of the adequacy, performance, or condition of any portion of the Work or the Property.

The parties acknowledge that this document constitutes a binding and enforceable agreement among them and that they have carefully read and examined the foregoing provisions before affixing their signatures.

_____, Owner Date

_____, Owner Date

_____, Contractor Date

CLEVELAND RESTORATION SOCIETY

By: _____

Print Name: _____ Date

Its: Heritage Home Program Associate

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