

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF FINANCIAL ASSISTANCE**

Emergency Housing and Assistance Program Capital Development

2020 W. El Camino Ave., Suite 400, 95833

P. O. Box 952054,

Sacramento, CA 94252-2054

(916) 263-2771 / FAX (916) 263-3391

www.hcd.ca.gov**Emergency Housing and Assistance Program Capital Development (EHAPCD)
1st Amended Loan Escrow Instructions**

Name of Escrow Officer
Name of Escrow/Title Company
Address of Escrow Company
City, CA Zip code

Date

RE: Project: «Project_Shelter»
Borrower: «Applicant_Name»
Escrow Number:
Contract No.: «Loan_No»
Escrow Officer Phone Number:
Escrow Officer Email:

Dear Ms. / Mr. Last Name of Escrow Officer:

This letter constitutes the initial/1st Amended escrow instructions of the Emergency Housing and Assistance Program Capital Development ("EHAPCD") by the State of California, Department of Housing and Community Development an agency of the State of California (the "Department") in connection with financing to be provided by the Department under EHAPCD to «Applicant_Name», «Organization_Status» (the "Borrower") for the purpose of providing the permanent financing for that certain real property located at «Shelter_Address», «Shelter_City», CA «Shelter_Zip_Code», (Insert APN #), and described in Exhibit A, attached hereto (the "Property").

Please indicate your receipt and acceptance of these instructions, execute the Acknowledgement of Receipt and Acceptance attached to these instructions on page INSERT PAGE NUMBER, and return the enclosed form to «EHAPCD_Representative», Contract Representative, via e-mail at: «EHAPCD_Rep_Email». You are not authorized to transfer funds or record documents until you have complied with all requirements of these instructions as may be amended from time to time.

The Borrower must sign all EHAPCD loan documents in the presence of an escrow officer for (INSERT ESCROW COMPANY NAME).

EHAPCD funds are disbursed as a reimbursement. No funds shall be disbursed for any escrow and/or title fees until you have received written authorization from the Department.

A. CLOSING FUNDS AND DOCUMENTS:

From the Department, in connection with the closing of the above-referenced loan, enclosed are the following:

1. A warrant in the sum of \$**INSERT AMOUNT OF PAYMENT AUTHORIZED** to be deposited into an interest bearing federally insured escrow account (IBA) for disbursement per Section D.2. of these escrow instructions. **(TAKE THIS LANGUAGE OUT IF WARRANT HAS BEEN SENT TO ESCROW).**
2. A Promissory Note Secured by a Deed of Trust in favor of the Department to be executed without further modification or amendment by the Borrower in the principal sum of «Loan_Amount» (the "Department Note").
3. A Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Permanent Financing) on the Property securing the Department Note to be executed without further modification or amendment and acknowledged by the Borrower (the "Department Deed of Trust").
4. A Regulatory Agreement regarding the Property, executed by the Department, and to be executed without further modification or amendment and acknowledged by the Borrower (the "Department Regulatory Agreement").
5. A **Development Agreement** *(will be sent to you at a later date)* regarding the Property executed by the Department, to be executed without further modification or amendment and acknowledged by the Borrower (the "Department Development Agreement"). *(Add this language if Development Agreement is being sent at a later date: You will receive a Development Agreement when major rehabilitation is ready to commence which will be funded with EHAPCD monies. The Development Agreement, regarding the Property, will then be executed by the Department and will be executed by the Borrower without further modification or amendment. Separate Escrow instructions will be sent to you with the Development Agreement when the appropriate conditions are submitted to EHAPCD and rehabilitation is ready to commence.*
6. A **Request for Notice** relating to the <name of lender> to be completed and signed by you in escrow, and acknowledged for recording purposes, (the "Department Request for Notice").
7. A Corporate Certificate to be executed by the Borrower's Authorized Representative. **(NOT NEEDED IF BORROWER IS A CITY OR COUNTY AGENCY).**
8. A **Lease Rider** regarding the lease hold interest in the Property, executed by the Department, and to be executed and filed on behalf of the Department

without further modification or amendment and acknowledged by the Borrower (the "Lease Rider").

9. A **Subordination Agreement**, executed by the Department, and to be executed by the **<name of borrower>** and **<name of lender>** and recorded on behalf of the Department of Housing and Community Development without further modification or amendment and acknowledged by the Borrower or Junior Lienholder (the "Subordination Agreement").
10. For funds being deposited into an interest bearing escrow account, attach a W-9 form, executed by the Department, Exhibit D.

B. CONDITIONS OF CLOSING:

All of the following conditions must be satisfied prior to close of escrow:

1. In the event there are new defects in or liens or encumbrances on the title since the last Preliminary Title Report dated, **DATE OF CURRENT PRELIM.**, these escrow instructions shall become null and void.
2. For new construction projects or projects being rehabilitated, you have received evidence of Builder's Risk Insurance. For all projects you have received evidence of insurance described in **Exhibit C (change to Exhibit B if acquisition only)** encumbering the property and have faxed or emailed said evidence to the Department for review and acceptance.
3. A certified copy of the recorded Grant Deed conveying the Seller's (**INSERT SELLER(S) NAME(S)**) interest in the Property to the Borrower.
4. From, **INSERT THE NAME(S) OF OTHER LENDER OR FINANCE SOURCE** the sum of **\$AMOUNT** which has been deposited into escrow for distribution to be authorized by name of representative from other lender or finance source.
5. From **INSERT THE NAME OF OTHER LENDER OR FINANCE SOURCE** a certified copy of the Promissory Note in favor of the **INSERT NAME OF OTHER LENDER OR FINANCE SOURCE** in the principal sum of **\$TOTAL LOAN AMOUNT OF OTHER LOAN** and a certified copy of the Deed of Trust securing this Promissory Note.
6. Please indicate your receipt and acceptance of these instructions by executing the Acknowledgement of Receipt and Acceptance form on page **X** and return to the Contract Representative, **«EHAPCD_Representative»** via e-mail at: **«EHAPCD_Rep_Email»**.
7. **(If applicable keep the following)** Please execute Exhibit B, Escrow Agent Disbursement Agreement on page **X**, and return the form to, Contract

Representative, «EHAPCD_Representative» via e-mail at:
«EHAPCD_Rep_EMail».

C. CLOSING MAY OCCUR WHEN:

1. You have received the funds and documents described in Items A.1-9/10 and B.1-5 above;
2. You are prepared and irrevocably committed to issue an A.L.T.A. Extended Coverage Policy - 2006 with A.L.T.A. Endorsement Form 1 Coverage and C.L.T.A. Forms 100, LEAVE 103.1 ENDORSEMENT IN IF applicable, 110.9 and 116 Endorsements, in the amount of «Loan_Amount», insuring the Department Deed of Trust in first-lien position, showing FEE/LEASEHOLD title to the Property vested in the Borrower, subject only to taxes and assessments paid current and Exceptions numbered INSERT NOS. OF EXCEPTIONS ACCEPTABLE TO HCD FROM PRELIMINARY TITLE REPORT as set forth in the Preliminary Title Report dated, INSERT DATE OF CURRENT PRELIM;
3. All of the above-referenced documents are fully executed, and the Department Deed of Trust and the Department Regulatory Agreement are sufficient in form for recordation and to encumber the Property as security for the Department's loan;
4. If applicable, you have received the Department's acceptance of Exhibit B, Escrow Agent Disbursement Agreement, attached, which constitutes a separate agreement, the terms of which are independent of this escrow, which has been fully executed by you as the Authorized Representative of the above named escrow company;
5. You have received the Department's acceptance of the proof of Builder's Risk Insurance (or binder) and/or acceptance of the proof of insurance described in Exhibit C (Exhibit B if acquisition only) naming the Department as an additional insured and loss payee; and
6. You have requested and received electronic or oral confirmation from «EHAPCD_Representative» at «EHAPCD_Rep_Phone_No» that all other considerations of closing required by the Department to be fulfilled outside of this escrow have been fulfilled to the satisfaction of the Department.

D. THEN AND ONLY THEN, YOU ARE INSTRUCTED TO:

1. Record in the Official Records of the County of «Shelter_County», the following executed Department documents, in the order below, without intervening documents:

First	Grant Deed as described in Item B.3., when applicable;
Second	Site Lease and Lease Rider and Estoppel Agreement, when applicable;
Third	Department Regulatory Agreement;
Fourth	Department Deed of Trust;
Fifth	Department Request for Notice, when applicable;
Sixth	Subordination Agreement, when applicable

(PLEASE NOTE: If you record any of the documents out of sequence, you may be required to re-record all documents in the correct order.)

(NOTE: Section 27383 of the Government Code provides that, with respect to recordation, "no fee shall be charged by the Recorder for services rendered to the State... except for making a copy....")

2. From the loan proceeds described in **Section A.1.**, of these escrow instructions:
 - a. Establish and credit «Loan_Amount» to a federally insured, interest bearing escrow account **(IBA)** for controlled disbursement of project related expenses.
 - i. **Establishing the federally insured, IBA will be the responsibility of the escrow/title company.**
 - ii. **Any and all costs associated with setting up the federally insured IBA shall be the responsibility of the Borrower.**
 - b. From the **federally insured IBA**, you are authorized to disburse to the **Borrower or Seller** the sum of **\$Amount**, authorized for initial release for **Acquisition, New Construction, Rehabilitation, and/or Administration/Non Recurring Cost** expenses.
 - i. Any and all interest accrued from the Department's funds shall accrue and be payable to the Department.
 - c. Further disbursements from the above-mentioned federally insured IBA are to be made as per Exhibit B (Escrow Agent Disbursement Agreement) **(Delete this language if all funds are being disbursed for acquisition expenses at the time of signing).**
3. Deliver to the Department, at the address shown below, and immediately following recordation of the documents identified in Item D.1. of these escrow instructions, the following items:
 - a. A conformed copy of the Grant Deed;

- b. A certified copy of the recorded Site Lease and certified copy of the Department's fully-executed and recorded Lease Rider and Estoppel Agreement;
- c. A certified copy of the fully-executed and recorded Department Regulatory Agreement;
- d. A certified copy of the original fully-executed and recorded Department Deed of Trust;
- e. A certified copy of the executed and recorded Department Request for Notice;
- f. The original, fully-executed Department Note;
- g. The original, fully-executed Department Development Agreement;
- h. A.L.T.A. Policy as required;
- i. A certified copy of the escrow closing statement;
- j. The original executed Corporate Certificate,
- k. **A copy of one-year prepaid Builder's Risk and/or insurance policy as required;**
- l. A certified copy of the executed and recorded Department Request for Notice of Default.

Deliver items D.3. a.-k. to the following address:

«EHAPCD_Representative», EHAPCD Contract Representative
Department of Housing and Community Development
2020 W. El Camino Ave., Suite 400, Sacramento, CA 95833
P. O. Box 952054, Sacramento, CA 94252-2054

If this escrow does not close on or within 30 working days from date of letter, prior to 5:00 p.m., you are instructed to hold all funds and documents delivered to you pursuant to these instructions pending further instructions from the Department. Time is of the essence.

For purposes of these instructions, escrow closing shall be deemed the date upon which the documents contemplated for recordation are recorded in the Official Records of the County of «Shelter_County» in accordance with the terms hereof.

The documents and monies herein described are delivered to you as escrow holder subject to compliance with these instructions. Acceptance by you of this escrow shall

constitute a contractual obligation with the Department for complete compliance with these instructions.

The Department reserves the right to revoke or amend in writing these instructions and recall documents at any time prior to recordation and disbursement of funds.

All costs and expenses for the photocopying, property taxes, delinquent assessments, delivery fees, transfer taxes and any other unauthorized charges with respect to the closing of the transactions contemplated by this letter shall be paid by either the Seller or the «Applicant_Name». The Department shall have no responsibility or liability for any such costs or expenses.

Sincerely,

Rebecca Matt, Section Chief
Homeless and Housing Assistance Programs Section

Enclosures:

Warrant No.: _____

Acknowledgement of Receipt and Acceptance

**Email signed form to: «EHAPCD_Representative»,
«EHAPCD_Rep_Email»**

As the authorized escrow officer, I hereby acknowledge receipt and acceptance of the above instructions and enclosures regarding Escrow No. **escrow number** for «Applicant_Name», «Organization_Status» and hereby agree to be bound by them.

By: _____
(Print name)

By: _____
(Co-executor, print name)

Signature: _____

Signature: _____
(Co-executor)

Title: _____

Title: _____

Date: _____

Date: _____

This document either (A) must be co-executed by both the escrow officer and either an officer of the company or the branch manager; or (B) must be executed by the escrow officer and returned to the Department with satisfactory written proof of authorization of the escrow officer to sign on behalf of the company.

Exhibit A
Legal Property Description

Insert legal description of project site

Assessor's Parcel Number: Insert project site's parcel number

Exhibit B
Escrow Agent Disbursement Agreement

Capital development disbursements from the federally insured, interest bearing escrow account (IBA) relating to **rehabilitation and /or new construction** development costs shall occur as specified in the Department Development Agreement, which must be executed before funds can be released. Authorized escrow agents shall perform the following disbursement procedures:

1. Promptly deposit the State funds into a federally insured, IBA. Any and all interest accrued from the Department funds shall be payable to the Department. **Establishing the federally insured, IBA will be the responsibility of the escrow/title company. Any and all costs associated with setting up the federally insured IBA shall be the responsibility of the Borrower.**
2. Draws will be approved by the EHAPCD contract representative of the Department upon completion of each **rehabilitation and/or new construction** stage pursuant to the Department Development Agreement. Borrower shall submit to the Department a Request for Disbursement form (RFD) properly endorsed by the following parties (original signatures are required):
 - a. Borrower or Borrower's authorized representative;
 - b. Contractor or Contractor's representative; and
 - c. Borrower's architect certifying completion of applicable **rehabilitation/construction** stage, if applicable.
3. EHAPCD contract representative shall contact the escrow company and request a "date down" Endorsement (standard 122) in the amount of the RFD. You shall:
 - a. Certify clear title one day prior to each disbursement and send a "date down" Endorsement (standard 122) to the Department.
4. Upon receipt of written authorization from the Financial Management Office (FMO) of the Department you shall:
 - a. Release a check drawn in the name of the Borrower. Check is to be release only to the Borrower's authorized representative.
5. Upon completion of the capital development work, you shall promptly:
 - a. Record a valid Notice of Completion executed and submitted for recording by the Borrower or its general contractor;
 - b. Issue a 101.2 Endorsement to the Department; and
 - c. Rewrite an A.L.T.A. lender's policy and issue to the Department.

By signing below, the escrow agent hereby acknowledges receipt and acceptance of the above terms of disbursement and hereby agrees to be bound by them.

By: _____
Escrow Officer

Date: _____

Print name of the Title Company

Exhibit C
INSURANCE REQUIREMENTS

ALL POLICIES MUST INCLUDE THE FOLLOWING LANGUAGE:

Named Insured: «Applicant_Name» and «Loan_No»

Additional Named Insured: The Department of Housing and Community Development and its officers, agents, employees, and Servants must be named as an insured.

Endorsement: Lender's Loss Payable Endorsement naming the Department as Loss Payee.

Cancellation and/or Change Clause: The Department must be notified 30 days prior to any change, non-renewal or cancellation of the insurance policy.

The Department shall be identified on all insurance documents as follows:

The Department of Housing and Community Development
P. O. Box 952054
Sacramento, CA 94252-2054

Attach agent's signed certification of coverage on agent's letterhead.

At close of escrow, the Department must receive a one-year prepaid Certificate of Insurance policy (or a binder followed by a certificate within thirty (30) days of loan closing) evidencing the following coverage:

1. **GENERAL REQUIREMENTS:**

Property and liability insurance policies, a separate flood insurance policy (if applicable) and all renewals must be with a company that rates A- or better, and has a Financial Size of Class VIII or better in Best's Key Rating Guide. The Department must approve exceptions in writing. All policies must name the Department as loss payee. All liability policies must name the Department as an additional named insured. All policies must have EHAPCD loan number.

2. **HAZARD (PROPERTY):**

A. Perils to be insured: Special perils for direct physical loss or damage to property, subject to policy exclusions, definitions, and limitations. Include coverage for the following perils:

- (1) Special form
- (2) Ordinance or law, including:
 - (a) Loss to undamaged portion of the building
 - (b) Demolition cost
 - (c) Increased cost of construction
 - (d) Increased period of restoration
- (3) Back up of sewers and drains
- (4) Flood special form

B. Covered Property: Real property improvements; and contents coverage.

- (1) Property Covered: All real and personal property owned by the insured or in which the insured has an interest, or for which the insured may be legally liable or which the insured has agreed in writing to insure, including:
 - (a) Insurance also applies to all temporary structures on premises specified or within 100' thereof
 - (b) Accounts receivable
 - (c) Valuable papers and records
 - (d) Fine arts
 - (e) Property in transit
 - (f) Fire damage legal liability – real property
 - (g) Trees, plants and shrubs
- (2) Additional Coverage/Extensions (detail what items will not be included, if any):
 - (a) Business income, including:
 - (i) Extended period of indemnity
 - (ii) Contingent business interruption
 - (iii) Off-premise power
 - (iv) Extra expense, including from dependent properties
 - (v) Interruption by civil authority
 - (vi) Neighboring property
 - (vii) Loss of rents/maintenance fees
 - (viii) Expending expenses
 - (ix) Increased period of restoration
 - (b) Soft costs
 - (c) Debris removal
 - (d) Pollutant clean-up and removal, including mold (sub-limit acceptable)
 - (e) Unnamed locations
 - (f) Newly acquired locations
 - (g) Waiver of subrogation

C. Limit of Insurance:

Blanket limit covering buildings, structures, and personal property with a separate blanket limit for business income.

D. Valuation:

In the event of loss or damage to the insured property, the basis of adjustment shall be:

- (1) All real property improvement and personal property replacement cost (unless a lesser amount is approved by the Department)
- (2) Valuable papers and records – value: the cost of reproducing or reconstructing
- (3) Fine arts – the lesser of market value, replacing or restoring the property
- (4) Loss of rents/extra expense – actual loss sustained or 90% coinsurance
- (5) EDP equipment – functional replacement cost

E. Deductibles:

\$2,500 maximum deductible per occurrence; or
\$1,000 maximum deductible per occurrence if the completed project value is less than \$300,000.

Flood may have alternative deductibles.

F. Co-Insurance: 90% coinsurance clause on policy:

Preauthorized Agreed Amount endorsement Loss payee: Lenders Loss Payable Endorsement is required naming the Department as Loss Payee.

3. OTHER PROPERTY INSURANCE (WHEN APPLICABLE):

Flood Insurance: Coverage required to 80% of replacement cost if the property is located in a FEMA flood plain designation.

Boiler and Related (When applicable) 100% of Machinery: replacement cost coverage is required.

4. COMPREHENSIVE GENERAL LIABILITY FOR BODILY INJURY, PROPERTY DAMAGE AND PERSONAL INJURY ON A STANDARD ISO FORM:

Minimum amount: \$1,000,000 per occurrence; \$2,000,000 aggregate;
\$2,000,000 per occurrence for buildings with elevators;
\$4,000,000 aggregate.

Minimum amount: \$5,000,000 per occurrence; \$10,000,000 aggregate. May be provided by an umbrella or excess liability.

For buildings valued at more than \$10,000,000:

Minimum amount for Buildings over five stories:

\$2,000,000 for first story.
\$1,000,000 per each additional story.

Medical payments: \$25,000 per person optimum; \$5,000 per person minimum.

5. OTHER COVERAGE:

Workers Compensation: Required by state law if employees are involved. Employer liability shall be \$1,000,000.

Employer's non-owned
Auto liability: Same limit as General liability.

6. SPECIAL COVERAGE:

SRO: Disclose central kitchens as separate personal property by square footage and value of the kitchen service equipment (disclose receipts if applicable).

Recreation/Community: Special coverage required if not included in the building and Rooms: business personal property limits.

Day Care Facilities: Special coverage required if run separately. The day care center will be required to have separate insurance with limits not less than the limits applicable above and said policy shall name the owner and the Department as an insured.

7. CERTIFICATES AND EVIDENCES:

All Certificates and Evidences must include the name of the project, the address of the project, the name of the borrower as named insured, and the EHAPCD loan number. The Department, its officers, agents, employees, directors, and appointees shall be named as insured as their interests may appear.

Exhibit D W-9 FORM

Form W-9 (Rev. October 2007) Department of the Treasury Internal Revenue Service	Request for Taxpayer Identification Number and Certification	Give form to the requester. Do not send to the IRS.
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Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return) Department of Housing & Community Development	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶	<input checked="" type="checkbox"/> Exempt payee
	<input checked="" type="checkbox"/> Other (see instructions) ▶ State	
	Address (number, street, and apt. or suite no.) P.O. Box 952054 City, state, and ZIP code Sacramento, CA 94252-2054 List account number(s) here (optional) -EHAPCD-	Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
_____ _____ _____
OR
Employer identification number
68 : 0303547

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form
 A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,