

CONSTRUCTION LOAN ESCROW AGREEMENT

This Agreement made and entered into as of _____, 20____ by and between _____, hereinafter referred to as Owner/Borrower, and _____, hereinafter referred to as Lender, and **Brabazon Title Co., Inc.**, hereinafter referred to as Escrow Agent; witnesseth:

WHEREAS, Lender has entered into a construction loan agreement with said Owner/Borrower, in the principal sum of \$_____, secured by a mortgage on premises described as:

(with the address of _____); and

WHEREAS, Lender desires Escrow Agent to act as disbursement agent and the Escrow Agent desires so to act but only on the conditions hereinafter stated; and

WHEREAS, the General Contractor for the subject project is _____ and the Inspector is _____. Owner/Borrower(s) authorized to sign draw requests is/are _____ and said Owner/Borrower(s) phone and fax numbers are _____.

NOW THEREAFTER, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

- I. Prior to the first disbursement of funds hereunder, the following are requirements of this Escrow Agreement, to wit:
 - A. The Escrow Agent shall be furnished:
 1. An approval by the Lender of the condition of title to the premises described above;
 2. An approval by the Lender for loan disbursement purposes of the Owner's statement and the General Contractor's statement, which are provided at IA3 and IA4 below;
 3. A sworn Owner's statement disclosing the various contracts entered into by the Owner and setting forth the names of the contractors, their addresses, work or materials to be furnished, amounts of the contracts, amounts paid to date, amounts of current payments and balances due;
 4. A sworn General Contractor's statement setting forth in detail all contractors and material suppliers with whom he has contracted, their addresses, work or materials to be furnished, amounts of the contracts, amounts paid to date, amounts of current payments and balances due.
(Contractor's Breakdown)
 - B. The Escrow Agent shall be prepared to furnish to the Lender an ALTA Loan Policy with construction lien coverage, covering the requested disbursement, or if such a policy has been previously issued, Escrow Agent shall be prepared to furnish Endorsements, as attached hereto, covering the requested disbursement.
- II. Prior to each subsequent disbursement of funds hereunder, it is a requirement of this Escrow Agreement that the Escrow Agent be furnished:
 - A. A sworn General Contractor's statement setting forth in detail all contractors and material suppliers with whom he has contracted, their addresses, work or materials to be furnished, amounts of the contracts, amounts paid to date, amounts of current payments and balances due.
 - B. An approval by the Owner/Borrower of the requested disbursement and a statement that no additional contracts have been let since submission of the Owner's statement referred to earlier in Section IA3.
 - C. A report by the Inspector or a certification by the Architect certifying that work has been completed and materials are in place as indicated by the request for payment of the General Contractor. Said inspection is to be made and submitted by the Inspector/Architect;

- D. Sufficient funds to cover the requested disbursements and to pay for extras or change orders for which waivers have not been deposited and for which funds have not previously been deposited;
 - E. Sufficient funds to cover unpaid title and escrow charges. The minimum charge for disbursement services is **\$200.00** and will cover up to 4 draws. Additional draws shall charged at **\$50.00** each. Inspections performed by Brabazon Title Co., Inc. will be **\$160.00** to cover up to 4 inspections. Each additional inspection beyond 4 will be charged at **\$40.00** each;
 - F. Statements, waivers, affidavits, supporting waivers and release of lien, if necessary, satisfactory to Escrow Agent. The parties to this Construction Loan Escrow Agreement hereto agree that funds may be disbursed to the contractor on a "one draw delayed basis" (ODDB). ODDB shall mean for purposes of the agreement the disbursement by the Escrow Agent with the exception that the contractor shall provide lien waivers from subcontractors and material suppliers before the next disbursement and not the current disbursement. It is understood between all of the parties that because this method is being used, it is possible that a material supplier of subcontractor could file a lien on amounts that are unpaid to that material supplier or subcontractor, understanding that lien waivers are not being received before payments are made. This method is being selected because it is much more convenient for all of the parties involved and understanding that the parties feel there is a very low likelihood in view of the reputation of the contractor that liens would be filed.
 - G. All required documentation for the final draw request must be submitted to Escrow Agent prior to any disbursement of the final draw.
- III. All disbursements for construction purposes will be made by the Escrow Agent directly to _____. In the event that the General Contractor and any subcontractor jointly authorize the Escrow Agent to pay any funds due one to the other, the Escrow Agent may comply with such authorization.
- IV. As the Escrow Agent makes a partial disbursement of mortgage proceeds hereunder, it will furnish the Lender Endorsements, as aforesaid, covering each requested disbursement.
- V. Prior to the final disbursement of the funds hereunder, it is a requirement of this escrow that the Escrow Agent be prepared to furnish its ALTA Loan Policy, subject to the usual terms and conditions contained in that form of policy and also subject to exceptions as approved heretofore by lender, covering the date of final disbursement. With respect to the conditions of title, the liability of Escrow Agent in making any disbursements in reliance upon the title evidence referred to above shall not extend to the determination of whether or not it is acceptable to Lender, the furnishings of funds for disbursement being considered the acceptance of title as so reported.
- VI. If at any time during the course of construction the total of the unpaid disclosed cost of construction as indicated by the column totals on the General Contractor's sworn statement exceeds the amount of the undisbursed mortgage proceeds as calculated by subtracting the total amount of liability taken on the endorsements from the face amount of the mortgage, the Escrow Agent need not make further disbursements under the terms of this Escrow Agreement until the Owner/Borrower has deposited in this escrow the sum necessary to make the available funds equal to the unpaid disclosed cost of construction, or unless specifically directed to do so by the Lender. Also, if Escrow Agent discovers a misstatement in an affidavit furnished by General contractor or Owner/Borrower, it may stop disbursement until the misstatement has been corrected. If said misstatement is not corrected to the satisfaction of Escrow Agent, Escrow Agent may immediately return any funds in its possession to depositor.
- VII. The functions and duties assumed by the Escrow Agent include only those described in this agreement, and the Escrow Agent is not obligated to act except in accordance with the terms and conditions of this Escrow Agreement. The Escrow Agent does not insure that the building will be completed, nor does it insure that the building, when completed, will be in accordance with plans and specification, nor that sufficient funds will be available for completion, nor does it make the certifications of the Inspector/Architect it own, nor does it assume any liability for same other than procurement as one of the conditions precedent to each disbursement.
- VIII. Bill all title and escrow charges to the **Owner/Borrower**.
- IX. General Conditions:
- A. At any time prior to its commencement of disbursement of funds hereunder, the Escrow Agent reserves the right to decline commencement of disbursement of funds if the Title Insurance Company declines any risk offered for insurance hereunder, whereupon Escrow Agent shall return to the Lender any documents in its possession relating to such loan and the funds received by it. Commencement of disbursement makes this agreement effective as to all funds received and disbursed on the construction in question.
 - B. Where, after the first disbursement, a further title search reveals a subsequently arising exception over which the Title Insurance Company is unwilling to insure, Escrow Agent will notify the Lender and may discontinue disbursement until the exception has been disposed of to the satisfaction of the Lender. Until said exception is disposed of, Escrow Agent may immediately return any funds in its possession to depositor. A construction lien claim over which the Escrow Agent is required to insure hereunder does

not warrant a discontinuance of disbursement.

- C. Escrow Agent reserves the right to refuse to disburse a draw if, in its sole discretion, it determines it could not issue the required Policy Disbursement Endorsement or comply with any other of Lender's conditions for disbursement of said draw. In this regard, Escrow Agent reserves the right independently, of any requirements of Lender or borrower, to require General Contractor to submit waivers and any other documentation it deems appropriate in support of its sworn states. If Escrow Agent determines that it cannot issue the required Policy Disbursement Endorsement, then it shall return the funds and its written notice of refusal to disburse promptly upon making said decision.
- D. Escrow Agent has no liability for loss caused by an error in the certification furnished it hereunder as to work in place.
- E. Escrow Agent shall not be responsible for any loss of documents or funds while such documents or funds are not in its custody. Documents or funds deposited in the United States mail shall not be construed as being in custody of Escrow Agent.
- F. In the event of default as declared by the Lender and/or foreclosure by the Lender, Escrow Agent shall have the right to discontinue further disbursements under this agreement, and return any funds in its possession to depositor.

LENDER

By: _____

Title _____

ESCROW AGENT

By: _____

Title _____

The undersigned agrees that the improvement referred to in the Escrow Agreement will be constructed and completed in strict accordance with the plans and specifications and the building contract. The undersigned also concurs in the above escrow instructions signed by the Owner/Borrower and the Lender or their representatives.

GENERAL CONTRACTOR

By: _____

Title _____