

NEAR NORTH NATIONAL TITLE LLC

222 N. LaSALLE STREET  
CHICAGO, ILLINOIS 60601

312/419.3900  
FAX 312/419.0778

CONSTRUCTION LOAN ESCROW AGREEMENT

DATE: \_\_\_\_\_

ESCROW NUMBER: \_\_\_\_\_

TO: Near North National Title LLC, Escrowee

At the request of \_\_\_\_\_ referred to (hereinafter as Owner), \_\_\_\_\_ (hereinafter referred to as "Lender") will deposit, at intervals and installments to be determined by Lender and Borrower, proceeds of a \$ \_\_\_\_\_ loan secured by a mortgage on the premises described as follows:

Title Order Number \_\_\_\_\_ Owner/Borrower may also deposit or cause to be deposited funds not constituting mortgage proceeds into this Escrow and said funds shall be disbursed by Escrowee in accordance with this agreement.

Commonly known as \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_

For \_\_\_\_\_  
Type of Improvement \_\_\_\_\_

The General Contractor is \_\_\_\_\_

The Architect is \_\_\_\_\_

You are authorized and directed to disburse the funds deposited hereunder pursuant to statements of amounts due, approved by the Owner/Borrower, after obtaining only such releases and satisfactions of mechanic's liens or waivers of mechanic's and sworn statements of the General Contractor, subcontractors and material suppliers required by Near North National Title LLC to issue the insurance coverage herein specified.

Periodic disbursements will be made in accordance with the terms and provisions of this escrow agreement.

The terms and conditions of this escrow pursuant to which said disbursements are to be as follows:

- I. Prior to the initial disbursement of funds hereunder, it is a requirement of this escrow that Escrowee be furnished:
  - A. A written approval from Lender of the condition of title to the premises described above as disclosed by a title commitment with an effective date covering the date of recording of said trust deed or mortgage. If trust deed or mortgage has not been recorded, Escrowee will be prepared to do such recording and naming Lender as the proposed insured .
  - B. A written approval from Lender for loan disbursement purposes of the Owners statement and the General Contractor's statement, which are provided at I(C) and I (D) below;
  - C. A sworn Owner's statement disclosing the various contracts entered into by the Owner and setting forth the names of the contractors, their addresses, type of work or materials to be furnished, amounts of the contracts, amounts paid to date, amounts of current payments and balances to become due;
  - D. A sworn General Contractor's statement setting forth the names and addresses of all contractors and material suppliers with whom it has contracted in connection with said property including the amounts of contracts, amounts paid to date, amounts of current payments and balances due along with the General Contractor's overall waiver.
  - E. Supporting waivers, affidavits and material waivers (if applicable) for any payments made outside this escrow. In the event waivers are unavailable, a title indemnity or satisfactory bond (secured by a title indemnity) for 150% of missing documentation should be established.
  - F. Sufficient funds to pay all title and escrow fees. Payment is due at the time of the first draw unless other arrangements have been made with Escrowee to pay said fees prior to or simultaneous with the second draw request

- II.** Prior to each disbursement of funds hereunder, it is a requirement of this escrow that Escrowee be furnished:
- A. The sworn Owners and General Contractor's statements referred to in Section I(C) and I (D).
  - B. The written approval of the Owner of the requested disbursement.
  - C. Sufficient funds to cover the requested disbursement including title and escrow charges which may have been incurred during the interim period.
  - D. A report by the inspector or a certification from the architect certifying that work has been completed and materials are in place as indicated by the request for payment of the general contractor.
  - E. Sworn statements, waivers, affidavits, supporting waivers and release of lien in such form as deemed necessary by Escrowee for the purpose of providing the title insurance coverage herein.
- III. Prior to the final disbursement of funds, it is a requirement of this escrow that Escrowee be provided all satisfactory documentation before release of any portion of the final draw request.**

**In the event documentation is missing or unsatisfactory documentation is provided, Title Company shall inform Borrower in writing regarding same. If Borrower is unable to supply the missing documentation or satisfactory versions of the unsatisfactory documentation, a title indemnity or satisfactory bond (secured by a title indemnity) for 150% of the amounts in dispute should be established.**

- IV.** It is a requirement of this escrow that concurrent with:
- A. The first disbursement of funds hereunder, Escrowee is prepared to issue an ALTA loan policy with pending and interim mechanic lien endorsements covering the date and amount of said deposit; or if said policy has been previously issued Escrowee shall be prepared to issue its date down endorsement with interim mechanic lien coverage.
  - B. Each subsequent disbursement of funds hereunder, Escrowee be prepared to issue its date down endorsement and interim mechanic lien endorsements, covering the date and amount of said lender's deposit.
  - C. The final disbursement of funds hereunder, Escrowee be prepared to furnish its date down endorsement and final endorsement. With respect to the conditions of title, the liability of Escrowee, 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 furnishing of funds for disbursement being considered the acceptance of title so reported.
- V.** If at any time during the course of construction the total of the unpaid disclosed cost of construction as indicated by the column totals of the sworn Owners statement exceeds the amount of the undisbursed mortgage proceeds as calculated by subtracting the total amounts of liability taken from the face amount of the mortgage, Escrowee need not make further disbursements under the terms of this escrow until the Owner has deposited in this escrow the sum necessary to make the available funds equal to the unpaid disclosed cost of construction
- VI.** Near North National Title LLC has no liability to the Owner relating to protection against mechanic lien claims.
- VII.** If Escrowee discovers a misstatement in an affidavit furnished by General Contractor or Owner, it may stop disbursement until the misstatement has been corrected.
- VIII.** The functions and duties assumed by Near North National Title LLC include only those described in this agreement and the Escrowee is not obligated to act except in accordance with the terms and conditions of this escrow. Near North National Title LLC does not insure that the building will be completed, nor does it insure upon completion, that work will be done in accordance with plans and specifications. Near North National Title LLC does not insure that sufficient funds will be available for completion or does it make the certification of the inspector or architect its own, other than procurement as one of the conditions requirement to disbursement, (if applicable).
- IX.** All disbursements for construction purposes will be made by Escrowee directly to the

\_\_\_\_\_. All other costs listed on the sworn Owner's statement will be made directly to the party listed on the sworn statement. In the event that the general contractor and any subcontractor jointly and in writing authorize Escrowee to pay funds due one to the other Escrowee may comply with such written authorization. However, it is the intention of the parties named herein and signatory hereto that no person not a party signatory to this escrow shall have the right to look to Escrowee for any disbursement hereunder under a third party beneficiary theory or otherwise, and that Escrowee owes no duty to any such third party to make any disbursement.

## X. GENERAL CONDITIONS

- A. At any time prior to commencement of disbursement of funds hereunder, Escrowee reserves the right to decline commencement if Near North National Title LLC declines any risk offered for insurance hereunder, whereupon Escrowee shall return to Lender any documents in its possession relating to such loan and the funds received by it. Commencement of disbursements 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 Near North National Title LLC is unwilling to insure, Escrowee will notify Lender, and may discontinue disbursement until such exception has been disposed of to the satisfaction of the Lender. A mechanic's lien claim over which Near North National Title LLC is required to insure hereunder does not warrant a discontinuance of disbursement.
- C. In the event of defaults declared by Lender and/or foreclosure by Lender, Escrowee shall have the right to discontinue further disbursements under this agreement.
- D. Escrowee shall not be responsible for any loss of documents or funds which are not in its custody. Documents or funds deposited in the United States mail shall not be construed as being in custody of Escrowee.
- E. Deposits made pursuant to these instructions may be invested on behalf of any party or parties hereto: Provided, that any direction to Escrowee for such investment shall be expressed in writing and contain the consent of all other parties to this escrow, and also provided that you are in receipt of the taxpayer's identification number and investment forms as required. Escrowee, will upon request furnish information concerning its procedures and fee schedules for investment.

Except as to deposits of funds for which Escrowee has received express written direction concerning investment or other handling, the parties hereto agree that the Escrowee shall be under no duty to invest or reinvest any deposits at any time held by it hereunder; and further, that Escrowee may commingle such deposit with other deposits or with its own funds in the manner provided for the

administration of funds under 205ILCS 620, Corporate Fiduciary Act and may use any part of all such funds for its own benefit without obligation to any party for interest or earnings derived thereby, if any. Provided, however, nothing herein shall diminish Escrowee's obligation to apply the full amount of the deposits in accordance with the terms of this Agreement.

In the event the Escrowee is required to invest deposits hereunder, Near North National Title LLC is not to be held responsible for any loss of principal or interest which may be incurred as a result of making the investments or redeeming said investment for the purposes of this escrow trust.

**XI.** Bill all charges to

\_\_\_\_\_  
\_\_\_\_\_

**XII.** If conflicting demands are made upon Escrowee or legal action is taken in connection with the Escrow, Escrowee may withhold and stop all further proceedings without liability therefor, or Escrowee may file suit in interpleader or for declaratory relief. If Escrowee is required to respond to any legal summons or proceedings, or if any action of interpleader or declaratory relief is brought by Escrowee, or if conflicting demands or notice by parties to this Escrow or by any other party or parties are served upon Escrowee, the undersigned jointly and severally agree to pay reasonable escrow fees and all costs, expenses, and reasonable attorney's fee expended or incurred by Escrowee as a result of any of the above described events. The undersigned further agree to save Escrowee harmless as escrow holder under the Escrow from all losses and expenses, including reasonable attorney's fee and court cost incurred by reason of any claim, demand, or action filed with respect to the Escrow. The undersigned jointly and severally agree to pay the fees of Escrowee and reimburse Escrowee for all expenses incurred in connection herewith and direct that all sums due to Escrowee pursuant hereto be deducted from the sums held in the Escrow prior to disbursement of said sums, to the extent said sums are sufficient to pay all sums due Escrowee. The undersigned hereby grant Escrowee a lien against the deposits held in the Escrow to secure all sums due Escrowee.

**XIII.** The undersigned agree that this Construction Loan Escrow agreement is not intended by any of the undersigned to give any benefits, rights, privileges, actions or remedies to any person, partnership, firm or corporation other than Near North National Title LLC, \_\_\_\_\_ (Lender) and \_\_\_\_\_ (Owner) under a third party beneficiary or otherwise under any theory of law.

FOR THE LENDER

Name: \_\_\_\_\_

Title: \_\_\_\_\_

FOR THE OWNER/BORROWER

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACCEPTED: NEAR NORTH NATIONAL TITLE LLC, ESCROWEE

BY: \_\_\_\_\_

Title:

The undersigned acknowledges that it is neither party to the Construction Loan Escrow agreement, nor does this agreement confer any benefits, rights, privileges, actions or remedies to any persons, partnership, firm or corporation other than Near North National Title LLC, \_\_\_\_\_ (Lender) and \_\_\_\_\_ (Owner) under a third party beneficiary theory or otherwise under any theory of law.

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

\_\_\_\_\_  
FOR THE GENERAL CONTRACTOR

Name: \_\_\_\_\_

Title: \_\_\_\_\_