

CONSTRUCTION LOAN ESCROW DISBURSEMENT AGREEMENT – WISCONSIN

Commitment/Policy No.: _____

1. This agreement sets forth the instructions from Lender and Owner to Escrowee for the disbursement of construction loan and owner equity funds for the construction of improvements on the property described in the above-referenced title insurance commitment or policy (the "Project"). The Lender will, from time to time, deposit a total of \$ _____ (the "Loan Funds") with _____ ("Escrowee"). Owner or Lender may deliver to Escrowee funds of the Owner, which represent the Owner's equity contribution to the improvements, including the cost of additions the Project or cost overruns. The General Contractor is to be _____, and the Inspector is to be _____.
2. Escrowee is authorized and directed to disburse the funds deposited hereunder in the following manner:
 - a. pay costs of construction of an improvement (the "Improvement") to be erected on the Premises;
 - b. obtain releases and satisfaction of liens and other encumbrances, if any, pursuant to statements of amounts due, which must be approved by Owner and Lender; and
 - c. pay such other amounts as are approved by Owner and Lender.
3. **Draws.** There will be _____ disbursements (the "Draw") during the Construction, which are to be made in accordance with the terms, conditions, and provisions of this Agreement. If not previously invoiced, each Draw shall include a fee of \$ _____, payable to Escrowee. All disbursements for the Construction will be made directly to the General Contractor and/or subcontractors, as designated by General Contractor. Additional Draws are \$ _____ per disbursement.

First Draw. Prior to the first Draw of the funds, Escrowee shall be furnished with the following required documents:

 - a. A General Contractor's Sworn Statement (ATG Form 3018-B), setting forth in detail the name, addresses, and telephone numbers of all contractors with whom it has contracted, type of labor and materials to be furnished, amounts of the contracts (including extras and credits), amounts previously paid to date, amounts of current request, accumulative retainages to date, and balances due;
 - b. If applicable, Owner shall furnish Lender and Escrowee an Owner's Sworn Statement (ATG Form 3018-A), disclosing the various contracts entered into by Owner relating to the Construction. Owner will also provide names of the contractors, their addresses, kind of services, work, or material to be furnished, and the amounts to be paid pursuant to this Agreement.
 - c. Owner shall furnish, or cause to be furnished, to Escrowee W-9 forms from all persons or entities to be paid by Escrowee under this Agreement (including General Contractor, subcontractors, and suppliers). All W-9s must be submitted prior to disbursement of funds.
4. Owner and Lender understand and agree that the parties listed on Draw Requests, Owner's Sworn Statement, or General Contractor's Sworn Statement may not include all parties supplying labor, services, and/or materials to the Project. Escrowee is not responsible to review any lien waiver from any party not listed on a Draw Request, Owner's Sworn Statement, or General Contractor's Sworn Statement. Furthermore, notwithstanding the foregoing, Escrowee is only required to collect such lien waivers as needed to provide the title insurance coverage to the Lender specified by this Agreement. Owner and Lender acknowledge that any party supplying labor, services, and/or materials to the Project who is not paid in full may have lien rights against the Property.
5. **Survey.** In order to obtain insurance with respect to survey matters, Owner or Lender shall furnish to Escrowee a current ALTA survey. It is understood that the initial survey will depict the foundation of the proposed Improvements and that an "as-built" survey will be furnished once the Improvements have been completed. Upon examination and review of the initial "foundation" survey and subsequent updates, insurance with respect to survey matters will be provided at the discretion of Attorneys' Title Guaranty Fund, Inc. (ATG®).
6. Where, after the first disbursement, a further title search reveals a subsequently arising exception over which ATG is unwilling to insure, Escrowee will notify Lender and may discontinue disbursement until the exception has been disposed of to the satisfaction of Lender and ATG. A construction lien claim over which ATG is required to insure hereunder does not warrant a discontinuance of disbursements.
7. **Method of Disbursement.** All disbursements for construction purposes will be made by Escrowee directly to contractors, subcontractors, and materialmen listed and for the amounts shown on the Owner's Sworn Statement and/or the General Contractor's Sworn Statement, unless General Contractor submits a Letter of Direction – Authorization to Pay, executed by the subcontractor or materialman certifying payment in full as to the disbursement in question. In the event that General Contractor

and any subcontractor jointly authorize, in writing, Escrowee to pay any funds due one to the other, Escrowee may, but is not obligated to, comply with such authorization.

8. With respect to the condition 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 by the Lender being considered the acceptance of title as so reported.
9. If at any time during the course of construction, the total of the unpaid disclosed cost of construction of the Improvement, as indicated by the sum of the column totals on the Owner's Sworn Statement and the General Contractor's Sworn Statement, exceeds the amount of the undisbursed mortgage proceeds, as calculated by subtracting the total amount of liability of ATG shown on the Construction Loan Disbursement Endorsements from the face amount of the mortgage, Escrowee need not make further disbursements under the terms of this escrow until Owner 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 Lender. Also, if Escrowee discovers a misstatement in a Sworn Statement furnished by General Contractor or Owner, it shall:
 - a. stop disbursements until the misstatement has been corrected; and
 - b. inform Lender prior to making a further disbursement even though the same has been corrected.
10. **Disbursements.** Prior to each disbursement of Loan Funds hereunder, Owner, Lender, and General Contractor will furnish Escrowee:
 - a. An updated General Contractor's Sworn Statement and a General Contractor's Draw Request.
 - b. If applicable, an updated Owner's Sworn Statement and an Owner's Draw Request. The Owner's Draw Request and General Contractor's Draw Request are collectively defined as "Draw Request."
 - c. A report of 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.
 - d. Written approval by Owner of the payment by Escrowee for the current Draw ("Owner's Payment Authorization") (ATG Form 4114) (if Owner is an entity, written approval by its authorized agent (Escrowee may rely upon the signature on the approval as having been made by an authorized agent)). In the event that there is more than one Owner, the written approval by one Owner shall bind all Owners.
 - e. An approval by the Lender of the current Draw, which approval shall be deemed to have been given by the delivery to Escrowee of funds in the amount of the Draw, and for payment of any unpaid title premiums or Escrow Fee.
 - f. Sufficient funds to cover unpaid title and escrow charges.
 - g. Waivers of construction lien rights, in a form acceptable to Escrowee, which waivers are executed by all parties listed on the Draw Request for the current Draws, which waivers are partial as to all parties not yet paid in full, and in full as to all parties to be paid in full with the current Draw.
11. **Endorsement to Policy.** As Escrowee makes a partial disbursement of mortgage proceeds hereunder, it will furnish Lender an ATG Disbursement Endorsement (ALTA 33-06) to the ALTA Loan Policy, in the form attached as Exhibit A, covering such requested disbursement.
12. **Project Cost Increases.** If the Escrowee determines, or the Lender notifies Escrowee, that the undisbursed portion of the loan will not be sufficient to complete and pay for the construction of the Project, Owner shall deliver to Escrowee the sum necessary. If a Draw Request has been presented to Escrowee but not disbursed when the Escrowee is notified of the shortage of funds, Escrowee shall delay disbursement until the funds are received from the Owner.
13. **No Interest on Escrowed Funds.** All parties acknowledge that no interest will be paid on any Loan Funds while held by Escrowee pursuant to this Agreement and that, in addition to the fees payable to Escrowee for its services, Escrowee may receive ancillary benefits from the use of the Loan Funds while held in escrow.
14. **Final Draw.** Prior to the final Draw of the funds, Escrowee shall be furnished with a Final Waiver of Lien and Contractor's Affidavit (ATG Form 3005) from the General Contractor.
15. **Billing.** Bill all title, recording, escrow charges, and transfer taxes to Owner and collect the same from the funds deposited by Lender pursuant to this Agreement. All such title, recording, escrow charges, and transfer taxes are to be considered as a cost of construction of the Improvement for purposes of paragraph 9 of this Agreement.
16. **No Owner Lien Coverage Granted.** The only responsibility of Escrowee to Owner created by this Agreement is the faithful performance of the obligations created by this Agreement. Owner acknowledges that this Agreement is not a promise by Escrowee to provide Owner with any protection against construction lien claims, either under this Agreement or in a title insurance policy.

17. **Escrow Termination; Resignation of Escrowee.** This escrow shall terminate, and Escrowee shall have no further liability hereunder, in any of the following events:

- a. if ATG does not issue the title insurance policy to Lender; or
- b. If a subsequent title search reveals a matter for which Lender requires an assurance that ATG is unwilling to provide.

Escrowee shall also have the right to resign as escrowee upon written notice to Owner and Lender. If the escrow terminates or if Escrowee resigns, Escrowee may return all deposits to the depositor.

18. **Liability of Escrowee and ATG.** The functions and duties assumed by Escrowee include only those described in this Agreement and the liability of ATG is limited to the terms, conditions, and exceptions contained in the ALTA Loan Policy. Escrowee is not obligated to act except in accordance with the terms and conditions of this Agreement. Escrowee does not insure:

- a. that the Improvement will be completed;
- b. that the Improvement, when completed, will be in accordance with plans and specifications;
- c. that sufficient funds will be available for completion; or
- d. the accuracy of the certificates of the Inspector other than the procurement of the certificate as one the of the conditions precedent to each disbursement. ATG and Escrowee assume no liability to Owner relating to protection against construction lien claims.

19. **Hold Harmless.** The parties acknowledge that Escrowee is acting at the request of and for the accommodation of the parties, and hereby release and hold Escrowee harmless from liability for any acts performed in good faith, in relation to the funds, and the disbursement thereof. The parties agree that any action in relation to an alleged breach of this Agreement by Escrowee shall be commenced within two years of the date of the breach, without regard to the date the breach is discovered. Any action not brought against Escrowee within that two-year time period shall be barred, without regard to any other limitations period set forth by law or statute, and Lender and Owner hereby waive any statute of limitations to the contrary.

20. **No Third Party Beneficiaries.** This Agreement is not intended by any of the undersigned to give any benefits, rights, privileges, actions, or remedies to any person, partnership, firm, or entity, other than the Escrowee, Lender, and Owner, as a third party beneficiary or otherwise under any theory of law.

21. **General Conditions.** At any time prior to its commencement of disbursement of funds hereunder, Escrowee reserves the right to decline commencement of disbursement of funds if ATG declines to insure 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 disbursement of funds makes this Agreement effective as to all funds received and disbursed for the construction of the Improvement.

- a. **Compensation of Escrowee.** Escrowee shall be compensated for its services rendered under this Agreement at the time of, and from the funds deposited for, each disbursement. In addition, Escrowee shall be paid for investment or reinvestment of funds (if directed jointly by Owner and Lender) and for any other special services that may be rendered by it, in accordance with invoices rendered by Escrowee from time to time. All fees and title charges due Escrowee and title charges, search fees, recording fees, transfer taxes, and the like due to ATG, and any other costs and/or fees advanced by Escrowee on behalf of any party to this Agreement shall be paid to Escrowee prior to or contemporaneously with issuance of each Construction Loan Disbursement Endorsement to the ALTA Loan Policy.
- b. **Binding Effect.** This Agreement may be executed in multiple original counterparts, duly executed by Beneficiary, Trustee, Lender, and Contractor, provided, however, this Agreement shall not become binding upon Escrowee until it has received manually executed original copies of the same from each of the foregoing named parties and Escrowee has accepted the same and delivered copies of said executed Agreement to each of said parties.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. If there be more than one person designated herein, the verbs and pronouns associated therewith, although expressed in the singular, shall be read and construed as plural. Whenever the masculine gender is used herein it shall also be read and construed as the feminine, and vice-versa, as the case may be.
- d. It is mutually agreed and understood by and between the parties hereto that the agreements herein contained shall extend to and be obligatory and binding upon the heirs, executors, administrators, successors, and assigns of the respective parties hereto.
- e. In the event that any provision of this Agreement, or part thereof, shall be held to be void or unenforceable by a final, non-appealable order entered by a court of competent jurisdiction, such determination shall not affect or impair the enforceability of the remaining portions of this Agreement.
- f. Each party hereto represents and warrants to the other parties hereto that it has full power and authority to execute this Agreement and to perform or cause to be performed the obligations on its part to be performed.

- g. In the computation of a period of time, if any, expressed in this Agreement, the day of the act or event from which said period of time runs shall be excluded and the last day of such period shall be included, unless it falls on a Saturday, Sunday, or legal holiday observed by the office of the Recorder of Deeds of the county in which the Premises is located, in which case the period shall be deemed to run until the end of the next day, which is not a Saturday, Sunday, or such legal holiday.
- h. This Agreement constitutes the entire agreement of the parties hereto and supersedes any prior or contemporaneous agreements, representations, or understandings, whether written or oral. This Agreement may be amended only by written instrument executed by each of the parties hereto.
- i. The captions contained in this Agreement are for convenience only and are not part of the terms, provisions, or conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed as of the

_____ day of _____, _____
 Day Month Year

OWNER

OWNER

 Signature

 Signature

 Name (Print)

 Name (Print)

LENDER

ESCROW AGENT

 Name of Lender (Print)

 Name of Escrow Agent (Print)

By _____
 Signature

By _____
 Signature

 Name (Print)

 Name (Print), Its Authorize Representative

 Title

The undersigned General Contractor acknowledges receipt of a copy of this Agreement and agrees that:

- a. there are no rights or remedies that inure the benefit of the General Contractor under Agreement, whether under a third party beneficiary theory or otherwise; and
- b. The Construction referred to in this Agreement will be constructed an completed in strict accordance with plans and specifications and the building contract, free and clear of any liens or claims of subcontractors, laborers, and/or materialmen.

GENERAL CONTRACTOR

By _____
 Signature

 Name (Print)

 Title

Phone: _____

Fax: _____

E-mail: _____

FEIN: _____

Notices. It is hereby agreed between the parties to this Agreement that any notices related to this Agreement shall be submitted as follows:

To Owner:

Name: _____
Address: _____
City, State, Zip: _____
Phone: _____
Fax: _____
E-mail: _____

To Escrowee:

Name: _____
Address: _____
City, State, Zip: _____
Phone: _____
Fax: _____
E-mail: _____

To Lender:

Attn: _____

Address: _____
City, State, Zip: _____
Phone: _____
Fax: _____
E-mail: _____

ENDORSEMENT

EXHIBIT A

ATTORNEYS' TITLE GUARANTY FUND, INC.

Policy No.:

State Issued:

DISBURSEMENT ENDORSEMENT (ALTA 33-06)

- 1. The Date of Coverage is amended to _____.

 - a. The current disbursement is: \$ _____
 - b. The aggregate amount, including the current disbursement, recognized by ATG as disbursed by the Insured is: \$ _____

2. Schedule A is amended as follows:

3. Schedule B is amended as follows:

Part I

Part II

ATG hereby insures the Insured against loss or damage by reason of lack of priority of the lien of the insured mortgage or any lien, or right to a lien, imposed by law for the cost of services, labor, or material furnished for Improvement on the Land prior to the above effective date of this endorsement.

This endorsement is made a part of the policy and is subject to all terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Date

Member No.

Signature of Member or Authorized Signatory