

ATTORNEYS' TITLE GUARANTY FUND, INC.

CONSTRUCTION LOAN ESCROW AGREEMENT

Respond to this office:

One South Wacker Drive
24th Floor
Chicago, IL 60606-4654
312.372.8361
Fax: 877.892.6282

2102 Windsor Place
P.O. Box 9136
Champaign, IL 61826-9136
217.359.2000
Fax: 217.359.2014

Escrow No.: \_\_\_\_\_

Date: \_\_\_\_\_

ATG Member Name: \_\_\_\_\_

Escrow Officer: \_\_\_\_\_

TO: ATTORNEYS' TITLE GUARANTY FUND, INC. ("Escrowee")

At the request of \_\_\_\_\_ (hereinafter referred to as "Owner/Borrower"),
\_\_\_\_\_ (hereinafter referred to as "Lender"), from time to time, will deposit with
Escrowee such proceeds, as it shall determine, of a \$ \_\_\_\_\_ loan secured by a mortgage or trust deed (the
"Mortgage") on the premises legally described in Attorneys' Title Guaranty Fund, Inc., ("ATG") Policy or Commitment for Policy
No. \_\_\_\_\_ (the "ALTA Loan Policy") as follows:

and commonly known as \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_
Street Address City State
(the "Premises").

Escrowee is authorized and directed to disburse the funds deposited hereunder in the following manner:

- 1. Pay costs of construction of an improvement (the "Improvement") to be erected on the Premises;
2. 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
3. Pay such other amounts as are approved by Owner and Lender.

The Inspector/Architect is to be \_\_\_\_\_ and the General Contractor is
to be \_\_\_\_\_.

There will be \_\_\_\_\_ disbursements, which are to be made in accordance with the terms and conditions of this escrow, as hereinafter
set forth.

## I. REQUIREMENTS PRIOR TO FIRST DISBURSEMENT

Prior to the first disbursement of funds hereunder, it is a requirement of this escrow that:

- A. Escrowee be furnished:
  - 1. Lender Initial Escrow Certification approving the condition of title to the Premises as set forth in the above-referenced ALTA Loan Policy;
  - 2. An approval by Lender for loan disbursement purposes of the Owner's Sworn Statement and the General Contractor's Sworn Statement, which are described at I.A.3 and I.A.4 below;
  - 3. An Owner's Sworn Statement disclosing every contract entered into by Owner and setting forth in detail the names, addresses, and telephone numbers of all contractors with whom it has contracted, type of labor and materials to be furnished, amounts of contracts (including extras and credits), amounts previously paid to date, amounts of current request, accumulative retainages to date, and balances due;
  - 4. A General Contractor's Sworn Statement setting forth in detail the names, 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;
  - 5. A current (dated no more than six months prior to the date of this Escrow Agreement) survey of the Premises prepared in accordance with the most current version of the "Minimum Standard Detail Requirements for Land Title Surveys" as adopted by the American Land Title Association and the American Congress of Surveying and Mapping, by a land surveyor licensed and registered in the state in which the property is located (hereinafter referred to as the "Surveyor") and certified to the Owner, Lender, and ATG. For each matter of record, the survey shall indicate the recorded document number. This survey, as updated from time to time, is hereinafter referred to as the "Survey."
- B. Escrowee shall be prepared to furnish Lender a Construction Loan Disbursement – Direct Payment Endorsement (ALTA 32.1-06), in the form attached as Exhibit A, to the ALTA Loan Policy covering the requested disbursements, or if such a policy has not been previously issued, Escrowee shall be prepared to furnish to Lender the ALTA Loan Policy with a Construction Loan Disbursement – Direct Payment Endorsement (ALTA 32.1-06) covering the requested disbursement. In the event that Escrowee will NOT be paying the contractor, sub-contractors, or suppliers directly, a Construction Loan Disbursement Endorsement (ALTA 32-06), in the form attached as Exhibit B, will be issued in lieu of the foregoing ALTA 32.1-06 Endorsement.

## II. REQUIREMENTS FOR EACH DISBURSEMENT

Prior to each disbursement of funds hereunder, including the first disbursement, it is a requirement of this escrow that Escrowee be furnished:

- A. A General Contractor's Sworn Statement, amended to and including date of disbursement, setting forth in detail the names, 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. An Owner's Sworn Statement amended to and including the date of disbursement, setting forth in detail the names, 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;
- C. An executed Construction Disbursement Authorization for the requested disbursement;
- D. A report by Inspector or a Certificate of Completion as of the date of the Owner's Sworn Statement and/or the General Contractor's Sworn Statement, certifying that work has been completed and materials are in place and incorporated into the Improvements as indicated by the request(s) for payment of the Owner and General Contractor;
- E. Evidence that sufficient funds are available to cover the requested disbursements and to pay for the completion of the Improvement, including extras, change orders, and non-construction items for which waivers have not been deposited and for which funds have not previously been deposited;
- F. Sufficient funds to cover unpaid title, recording and escrow charges, and transfer taxes;
- G. Statements, Sworn Statements, supporting lien waivers (consisting of at least Final Waivers of Lien or Waivers of Lien to Date, as appropriate), dated as of the date of the Owner's Sworn Statement and/or the General Contractor's

Sworn Statement, and releases of lien, if necessary, satisfactory to ATG;

- H. Escrowee may, at its option, verify information submitted by Owner and General Contractor or may require Owner and General Contractor to furnish to Escrowee verification by contractors, subcontractors, and material suppliers who have contracted with Owner and/or General Contractor.

### III. 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.

### IV. ENDORSEMENT TO POLICY

As Escrowee makes a partial disbursement of mortgage proceeds hereunder, it will furnish Lender an Attorneys' Title Guaranty Fund, Inc., Disbursement Endorsement (ALTA 33-06) to the ALTA Loan Policy, in the form attached as Exhibit C, covering such requested disbursement.

### V. REQUIREMENTS FOR FINAL DISBURSEMENT

Prior to the final disbursement of the funds hereunder, it is a requirement of this escrow that Escrowee be furnished the following:

- A. All required documentation for the final disbursement as delineated at II.A. through II.H., inclusive, above;
- B. A survey of the property, made in accordance with the requirements of I.A.5. above, showing the location of all Improvements as completed;
- C. An ALTA Statement, executed by Owner and Lender;
- D. Any and all other documents, undertakings, statements, releases, certifications, or things necessary or desirable to ATG, in its sole discretion, so that ATG is prepared to issue its final Disbursement Endorsement (ALTA 33-06), covering the date of final disbursement, subject to usual terms, conditions, and exceptions appearing in the above-referenced ALTA Loan Policy, and any Construction Loan Disbursement Endorsement (ALTA 32-06, ALTA 32.1-06, or ALTA 33-06) heretofore issued, as approved by Lender pursuant to paragraph I.A.1. hereof.

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.

### VI. OUT-OF-BALANCE LOAN

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: (1) stop disbursements until the misstatement has been corrected; and (2) inform Lender prior to making a further disbursement even though the same has been corrected.

### VII. 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. Neither ATG nor Escrowee insure that the Improvement will be completed, nor do they insure that the Improvement, when completed, will be in accordance with plans and specifications, nor do they insure that sufficient funds will be available for completion, nor do they make the certifications of the Inspector/Architect their own, nor do they assume any liability for same other than procurement of the report/certificate as one of the conditions precedent to each disbursement.

ATG and Escrowee assume no liability to Owner relating to protection against mechanic's lien claims.

## VIII. 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 VI of this Agreement.

## IX. GENERAL CONDITIONS

- A. 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.
- B. 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 mechanic's lien claim over which ATG is required to insure hereunder does not warrant a discontinuance of disbursements.
- C. Escrowee 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, given to a delivery service, or sent by wire transfer shall not be construed as being in the custody of Escrowee unless and until actually received by Escrowee.
- D. Escrowee shall not be liable for loss caused by any error in the reports or certifications furnished it hereunder as to work in place.
- E. All approvals of acts hereunder by any party to this Agreement shall be in writing.
- F. In fulfilling its responsibilities, Escrowee shall be bound solely by the express terms of this Agreement.
- G. Escrowee shall be entitled to assume the genuineness of all signatures and the authenticity of all lien waivers, Sworn Statements, and directions, and of all other documents and things delivered to it pursuant to this Agreement (collectively, "Documents"), if such Documents are submitted as originals; and the conformity with originals of all Documents submitted as copies. Furthermore, in making its examination of the Documents delivered to it under this Agreement, Escrowee shall be entitled to assume that each entity and/or person signing on behalf of such entity had full power and authority to enter into and perform all of its obligations thereunder; and Escrowee shall also be entitled to assume the due authorization by each such entity of all requisite action and the due execution and delivery of such Documents by each such entity.
- H. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. 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.
- I. 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.
- J. 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.
- K. 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.
- L. 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.
- M. 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.
- N. The captions contained in this Agreement are for convenience only and are not part of the terms, provisions, or conditions of this Agreement.

X. NOTICES

All notices and demands, whether required or otherwise, shall be in writing and served personally or by registered or certified mail, return receipt requested, with proper postage or delivery prepaid, to the parties at the following addresses:

**To Escrowee:**

Attorneys' Title Guaranty Fund, Inc.

ATTN: \_\_\_\_\_

Construction Escrow No. \_\_\_\_\_

One South Wacker Drive

24<sup>th</sup> Floor

Chicago, IL 60606-4654

Attorneys' Title Guaranty Fund, Inc.

ATTN: \_\_\_\_\_

Construction Escrow No. \_\_\_\_\_

2102 Windsor Place

P.O. Box 9136

Champaign, IL 61826-9136

**To Owner:**

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

**To Lender:**

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

**To Contractor:**

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

or such other addresses as any party may designate by written notice so served. Each such notice shall be deemed served on the date the U.S. Mail return receipt is signed, or delivery is refused, or the notice is designated by the Postal authorities as not deliverable; or one day after the date of deposit with a national overnight delivery courier for next day delivery; or the date when personally served on such party, as the case may be.

XI. 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.

XII. 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.

XIII. DEFAULT UNDER MORTGAGE

In the event of default under the Mortgage as declared by Lender and/or foreclosure of the Mortgage by Lender, Escrowee shall have the right to discontinue further disbursements under this Agreement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
Day Month Year

FOR LENDER:

\_\_\_\_\_  
\_\_\_\_\_  
Title

FOR OWNER:

\_\_\_\_\_  
\_\_\_\_\_  
Title

The undersigned agrees that this Agreement shall not be construed as, nor is it the intent of any of the parties hereto to give any benefits, rights, privileges, actions or remedies to any person, partnership, firm, or corporation, other than ATG, Lender, and Owner, under a third-party beneficiary theory or otherwise.

The undersigned agrees that the Improvement referred to in this Agreement will be constructed and completed in strict accordance with the plans and specifications and the building contract. The undersigned also concurs in and agrees to be bound by and comply with the terms, provisions, and conditions of this Agreement signed by Owner and Lender or their representatives.

FOR THE GENERAL CONTRACTOR:

\_\_\_\_\_  
\_\_\_\_\_  
Title

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
Day Month Year

 ATTORNEYS' TITLE GUARANTY FUND, INC.

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

**ENDORSEMENT**

**EXHIBIT A**

 **ATTORNEYS' TITLE GUARANTY FUND, INC.**

Policy No.:

State Issued:

**CONSTRUCTION LOAN DISBURSEMENT – DIRECT PAYMENT ENDORSEMENT (ALTA 32.1-06)**

1. Covered Risk 11(a) of this policy is deleted.
2. The insurance (for Construction Loan Advances) added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:
  - a. "Date of Coverage" is \_\_\_\_\_ unless the ATG® sets a different Date of Coverage by an ALTA 33-06 Disbursement Endorsement issued at the discretion of ATG.
  - b. "Construction Loan Advance" shall mean an advance that constitutes Indebtedness made on or before Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.
  - c. "Mechanic's Lien" shall mean any statutory lien or claim of lien affecting the Title that arises from services provided, labor performed, or materials or equipment furnished.
3. ATG insures against loss or damage sustained by the Insured by reason of:
  - a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;
  - b. The lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or encumbrance on the Title recorded in the Public Records and not shown in Schedule B; and
  - c. The lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage, over any Mechanic's Lien if notice of the Mechanic's Lien is not filed or recorded in the Public Records, but only to the extent that direct payment to the Mechanic's Lien claimant has been made by ATG or by the Insured with the ATG's written approval.
4. This policy does not insure against loss or damage (and the ATG will not pay costs, attorneys' fees, or expenses) by reason of any Mechanic's Lien arising from services, labor, material, or equipment:
  - a. furnished after Date of Coverage; or
  - b. to the extent that the Mechanic's lien claimant was not directly paid by the ATG or by the Insured with the ATG's written approval.

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
------	------------	---

**ENDORSEMENT**

**EXHIBIT B**

 **ATTORNEYS' TITLE GUARANTY FUND, INC.**

Policy No.:

State Issued:

**CONSTRUCTION LOAN DISBURSEMENT ENDORSEMENT (ALTA 32-06)**

1. Covered Risk 11(a) of this policy is deleted.
2. The insurance (for Construction Loan Advances) added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:
  - a. "Date of Coverage" is \_\_\_\_\_ unless the ATG® sets a different Date of Coverage by an ALTA 33-06 Disbursement Endorsement issued at the discretion of ATG.
  - b. "Construction Loan Advance" shall mean an advance that constitutes Indebtedness made on or before Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.
  - c. "Mechanic's Lien" shall mean any statutory lien or claim of lien affecting the Title that arises from services provided, labor performed, or materials or equipment furnished.
3. ATG insures against loss or damage sustained by the Insured by reason of:
  - a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;
  - b. The lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or encumbrance on the Title recorded in the Public Records and not shown in Schedule B; and
  - c. The lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage, over any Mechanic's Lien if notice of the Mechanic's Lien is not filed or recorded in the Public Records, but only to the extent that the charges for the services, labor, materials, or equipment for which the Mechanic's Lien is claimed were designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before Date of Coverage.
4. This policy does not insure against loss or damage (and the ATG will not pay costs, attorneys' fees, or expenses) by reason of any Mechanic's Lien arising from services, labor, material, or equipment:
  - a. furnished after Date of Coverage; or
  - b. not designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before Date of Coverage.

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
------	------------	---



**ENDORSEMENT**

**EXHIBIT C**

 **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

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
------	------------	---