



CONSTRUCTION LOAN ESCROW AGREEMENT

630-889-4000 (PHONE)

630-629-5096 (FAX)

Escrow Number:

TO: STEWART TITLE COMPANY ("Escrowee")

At the request of _____ (hereinafter referred to as "Lender"), from time to time, will deposit with Escrowee such proceeds, as it shall determine, from a \$ _____ loan secured by a mortgage or trust deed (hereinafter referred to as the "Mortgage") on the premises legally described in Stewart Title Company's policy or commitment for policy No. _____ (hereinafter referred to as "CLP") which is commonly known as: _____ IL (hereinafter referred to as the "Premises").

From time to time Owner may also deposit or cause to be deposited funds not constituting mortgage proceeds into this Escrow which said funds shall also be disbursed by Escrowee pursuant to the provisions of this Agreement.

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

1. Pay costs of construction of a certain 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 _____ disbursement draws 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

- A. Prior to the first disbursement of funds hereunder, it is a requirement of this escrow that Escrowee be furnished with the following:
 1. Lender Initial Escrow Certification approving the condition of title to the

Premises as set forth in the above-referenced CLP;

2. An approval by Lender for loan disbursement purposes of the Owner's and the General Contractor's Sworn Statement which are provided 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 the 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;
- B. Escrowee shall be prepared to furnish Lender a Construction Loan Disbursement Endorsement to the CLP covering the requested disbursements, or if such a policy has not been previously issued, Escrowee shall be prepared to furnish to Lender the CLP with a Construction Loan Disbursement Endorsement therein insuring the amount of the requested disbursement.

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 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 Owner and Lender Payment Authorization for the requested disbursement;
- D. 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;
- E. Sufficient funds to cover unpaid title, recording and escrow charges, and transfer taxes;

- F. 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 and General Contractor's Sworn Statement(s), and releases of lien, if necessary, satisfactory to Stewart Title Company
- G. 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 and 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 and General Contractor's Sworn Statement(s), unless General Contractor submits a Letter of Direction giving Escrowee authorization to pay, executed by the subcontractor or materialmen certifying their payment in full has been made as to the disbursement in question. In the event the General Contractor and any subcontractor jointly authorize, in writing, Escrowee shall 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 a Stewart Title Guaranty Company Construction Loan Disbursement Endorsement, to the Construction Loan Policy.

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.G., inclusive, above;
- B. A Composite Mortgage Statement (ALTA Form) executed by Owner and Lender.
- C. Any and all other documents, undertakings, statements, releases, certifications, or things necessary or desirable to Stewart Title Company, in its sole discretion, so that Stewart Title Company of Illinois is prepared to issue its final Construction Loan Disbursement Endorsement to the CLP, subject to usual terms, conditions and exceptions contained in that form of policy and also subject to the exceptions appearing in the above-reference CLP, and any Construction Loan Disbursement Endorsement 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 and General Contractor's Sworn Statement(s), exceeds the amount of the undisbursed mortgage proceeds, as calculated by subtracting the total amount of liability of Stewart Title Company, 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 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 an 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 STEWART TITLE COMPANY OF ILLINOIS

The functions and duties assumed by Escrowee include only those described in this Agreement and the liability of Stewart Title Company, is limited to the terms, conditions and exceptions contained in the CLP. Escrowee is not obligated to act except in accordance with the terms and conditions of this Agreement. Neither Stewart Title Company, 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. Stewart Title Company, and Escrowee assume no liability to Owner relating to protection against mechanics lien claims.

VIII. BILLING

- A. 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.
- B. An annual maintenance fee, as determined by the then current rate schedule, will commence one year from the date of this agreement, and may be deducted from the funds on deposit.

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 Stewart Title Company, 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 Stewart Title Company, 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 Stewart Title Company A mechanics lien claim over which Stewart Title Company, 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 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, as the case may be. 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.

O. 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 deposits with other deposits or with its own funds in the manner provided for the administration of funds under 205 ILCS 620/2-8 (1992), and may use any part of the 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 deposits in accordance with the terms of this agreement. However, any funds deposited hereunder with Escrowee and which have not yet been disbursed by Escrowee pursuant to the terms of the Construction Loan Escrow Agreement shall be immediately returned to Lender, without notice to any other party hereto, if at any time or from time to time Lender demands the return thereof. If no such demand is made by lender, Escrowee shall continue to have the Escrow funds in accordance with the terms of the Construction Loan Agreement.

In the event the Escrowee is requested to invest deposits hereunder, it shall not 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.

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 address:

To Escrowee:

STEWART TITLE COMPANY

Construction Escrow No.

2055 West Army Trail Road, Suite 110
Addison, IL 60101

To Owner:

Address and Telephone number:

To Lender:

Address and Telephone number:

To Contractor:

Address and Telephone Number:

or such other addresses as an 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 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 Stewart Title Company of Illinois, 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 CLP.

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 _____, 2005

FOR LENDER:

(Signature)

(Name)

(Title)

FOR OWNER:

(Signature)

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 Stewart Title Company, Lender, and Owner, under a third-party beneficiary theory or otherwise.

FOR THE GENERAL CONTRACTOR:

(Firm)

(Signature)

(Name)

(Title)

Construction Escrow Number:

Accepted this the _____ day of _____, 2005

By: _____
Stewart Title