

# ESCROW AGREEMENT

FOR CONSTRUCTION LOAN

Project Name: \_\_\_\_\_ Greater Illinois Title Company Order No.: \_\_\_\_\_  
Project Address: \_\_\_\_\_  
\_\_\_\_\_

## Owner Information

Name: \_\_\_\_\_ Attorney Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Address: \_\_\_\_\_  
\_\_\_\_\_  
Contact: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_ Fax: \_\_\_\_\_

## Lender to be Insured

Name: \_\_\_\_\_ Lenders Attorney: \_\_\_\_\_  
Address: \_\_\_\_\_ Address: \_\_\_\_\_  
\_\_\_\_\_  
Contact: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_ Fax: \_\_\_\_\_  
Party to be billed: \_\_\_\_\_

## Inspector/Architect

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Address: \_\_\_\_\_ Fax: \_\_\_\_\_  
\_\_\_\_\_

## GENERAL Contractor Information

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Address: \_\_\_\_\_ Fax: \_\_\_\_\_  
Contact Name: \_\_\_\_\_ Pager: \_\_\_\_\_

## Escrow Payments to be made payable to: (pick and circle one)

Subcontractors

General Contractor

If the General Contractor and any Subcontractor in writing jointly authorize GIT to pay the funds due one of them to the other, GIT may do so.

## Amount to be Disbursed through Escrow

Lenders Funds:

Owners Funds:

INITIAL ESCROW FEES WILL BE BILLED AT \$ \_\_\_\_\_ FOR \_\_\_\_\_ DRAWS.

## Escrowee Information- Greater Illinois Title Company

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Contact: \_\_\_\_\_



## **Section 1- PURPOSES OF THIS AGREEMENT**

OWNER has executed a MORTGAGE encumbering the property for the purpose of financing the project.

OWNER and LENDER have requested that GREATER ILLINOIS TITLE COMPANY, an Illinois Corporation, (GIT-ESCROWEE AND Escrowee of this Agreement), provide disbursing services for OWNER and LENDER, as a means to pay for construction and development costs on the project.

OWNER and LENDER have requested that GREATER ILLINOIS TITLE COMPANY, as agent for CHICAGO TITLE INSURANCE COMPANY, (GIT) issue its Policy for the benefit of the LENDER, periodically insuring the priority of the lien of the MORTGAGE, over mechanics liens as construction on the project progresses.

***IT IS NOT THE INTENTION OF THIS AGREEMENT, HOWEVER, TO PROVIDE THE OWNER WITH PROTECTION AGAINST MECHANIC LIEN CLAIMS***

At OWNER'S request, LENDER will make periodic cash deposits into this Escrow, not more than once a month, OWNER may also deposit his own funds into the Escrow, as necessary. All funds deposited into this Escrow will be disbursed by GIT-ESCROWEE according to the terms of this Agreement.

## **Section 2- REQUIREMENTS FOR A CONSTRUCTION DISBURSEMENT**

Before each Disbursement of Funds by GIT-Escrowee through the escrow:

A. GIT will:

Issue (or be prepared to issue) an ALTA LOAN POLICY (the POLICY), covering the date and amount of the requested disbursement, except for mechanics liens, together with DATE DOWN ENDORSEMENT 7, providing LENDER with mechanics lien coverage to the cover date of the General Contractor's sworn statement described below.

NOTE: After the initial disbursement, this requirement will be satisfied when GIT issues (or is prepared to issue) DATE DOWN ENDORSEMENT 7, covering the dates and amounts described above.

B. OWNER must give or cause others to give GIT-ESCROWEE the following:

1. A current SWORN OWNER'S STATEMENT;

The SWORN OWNER'S STATEMENT ***MUST***:

- a) disclose all the contracts made by the OWNER which relate to the project;
- b) state the name and address of each CONTRACTOR;
- c) state the type of work and full amount of each contract;
- d) show the amounts previously paid to each CONTRACTOR;
- e) show the amounts currently requested for payment to each CONTRACTOR; and
- f) Show any balances due or to become due to each CONTRACTOR

NOTE: THE DOLLAR AMOUNTS SHOWN IN c) AND f) MUST INCLUDE THE AMOUNTS OF ALL EXTRAS AND CHANGE ORDERS.

2. A current SWORN GENERAL CONTRACTOR'S STATEMENT;

The SWORN GENERAL CONTRACTOR'S STATEMENT ***MUST***:

- a) disclose the general contract, all contract items to be performed by GENERAL CONTRACTOR, all other contracts made by GENERAL CONTRACTOR which relate to the project;
- b) state the name and address of each SUBCONTRACTOR;

- c) state the type of work and full amount of each GENERAL CONTRACTOR'S line item, contract and subcontract;
- d) show the amounts previously paid to GENERAL CONTRACTOR, each CONTRACTOR, and each SUBCONTRACTOR;
- e) show the amounts currently requested for payment to GENERAL CONTRACTOR, each CONTRACTOR, and each SUBCONTRACTOR; and
- f) show any balance due or to become due GENERAL CONTRACTOR, each CONTRACTOR, and each SUBCONTRACTOR.

NOTE: THE DOLLAR AMOUNTS SHOWN IN c) AND f) MUST INCLUDE THE AMOUNTS OF ALL EXTRAS AND CHANGE ORDERS.

- 3. Enough FUNDS to cover the amount of the current disbursement request (whether from mortgage proceeds or from OWNER'S own funds);
- 4. A WRITTEN STATEMENT approving the current disbursements;
- 5. A REPORT by INSPECTOR or ARCHITECT certifying that work has been completed and that materials are in place as indicated in the current disbursement request; and
- 6. WAIVER OF LIEN, AFFIDAVITS, RELEASES OF LIEN, etc. all as may be required by GIT and covering the current disbursement so that GIT may provide LENDER the title insurance coverage contemplated by this agreement. **PRIOR TO THE FINAL DISBURSEMENT, GIT-ESCROWEE MUST RECEIVE ALL FINAL LIEN WAIVERS, INCLUDING ANY OUTSTANDING WAIVERS FROM PAST DISBURSEMENTS.**

C. THE LENDER MUST GIVE GIT-ESCROWEE THE FOLLOWING:

- a) For the initial disbursement only, a written STATEMENT approving the condition of the title as disclosed in the Policy.
- b) For ALL disbursements, a written STATEMENT approving the SWORN OWNER'S STATEMENT and the SWORN CONTRACTOR'S STATEMENT; and
- c) FUNDS representing the amount of mortgage proceeds to be used in paying the current disbursement request.

NOTE: After the initial disbursement, LENDERS deposit of FUNDS with GIT-ESCROWEE for subsequent disbursements will be construed as approving the condition of title.

**SECTION 3- DUTIES OF THE PARTIES AND TERMS OF THE AGREEMENT**

**GENERAL TERMS**

All of GIT-Escrowee's functions and duties to OWNER and LENDER are defined by this agreement.

Before GIT-Escrowee makes the initial disbursement of Escrow funds, it will advise LENDER if GIT is unwilling to insure over a particular title risk shown in the Policy for the benefit of the LENDER, GIT-Escrowee will not make the initial disbursement until the title risk is resolved to the LENDER'S satisfaction.

Before any subsequent disbursement of the Escrow funds, if a title risk arises and GIT is not willing to insure over it, GIT-Escrowee will notify the LENDER and GIT-Escrowee may stop making disbursements until the title risk is resolved to the LENDER'S satisfaction.

GIT-Escrowee will not deliver any payment to any payee unless the payee has previously filed with GIT-Escrowee a substitute W-9 form or files an original W-9 form (including the payee's social security number or taxpayer's identification number) in exchange for payment.

If the LENDER declares the mortgage to be in default, then GIT-Escrowee may stop disbursing the Escrow funds, LENDER shall immediately notify GIT-Escrowee in writing in the event LENDER declares the mortgage to be in default.

### **FUNDS TO COMPLETE THE PROJECT**

OWNER affirmatively states to GIT-Escrowee and GIT, that as of the date of this Agreement, there are sufficient funds available to complete the project.

Both OWNER and LENDER have a continuing duty to notify GIT-Escrowee immediately in writing, if and when either of them is to determine that there are not sufficient funds available to complete the project.

If during the construction of the project, GIT-Escrowee determines that the total unpaid cost of construction is greater than the remaining loan funds available for construction then it may stop disbursing until OWNER deposits enough funds in the Escrow to cover all remaining unpaid costs (minus remaining mortgage funds available for construction).

### **INFORMATION PROVIDED TO GIT-ESCROWEE & GIT BY OTHERS**

Git-Escrowee and GIT has the right to verify all information contained in any STATEMENTS provided to them. If GIT-Escrowee or GIT discovers any inaccuracies in these statements, GIT-Escrowee may stop disbursing until the inaccuracies are corrected.

### **OPTION OF INVESTING FUNDS DEPOSITED INTO THE ESCROW**

GIT-Escrowee may invest the funds deposited into the Escrow into a money market account at LaSalle National Bank, if said funds will be on deposit for a minimum of thirty (30) days. Both OWNER and LENDER must direct GIT-Escrowee to do so, in writing. However, GIT-Escrowee will not be responsible for any loss of principal or interest as a result of making or redeeming an investment. If the funds are to be invested, OWNER must then provide GIT-Escrowee with a taxpayer's identification number. Upon request, GIT-Escrowee will furnish more information about investment procedures and fees. Additional investment forms may also be required.

If OWNER and LENDER do not direct GIT-Escrowee to invest the funds, then by this Agreement the OWNER and LENDER direct GIT-Escrowee not to invest the funds and waive any rights they may have under Section 2-8 of the Illinois Corporate Fiduciary Act (205 ILCS 620/2-8) to receive interest. (You may also be asked to sign a separate document regarding the investment or non-investment of escrow deposits.) GIT-Escrowee may then commingle all funds deposited into the Escrow with other deposits or with its own funds as allowed by Section 2-8. GIT-Escrowee may use any of the Escrow funds for its own benefit and will not be liable for any interest. However, GIT-Escrowee is obligated to apply the full amount deposited into this Escrow according to the terms of this Agreement.

### **TITLE AND ESCROW FEES**

Git-Escrowee and GIT will bill title and construction escrow fees on or before the time the first disbursement request is made. Initial escrow fees must be paid at the time the first disbursement is processed. GIT reserves the right to bill for any additional draws which exceed the initial bill. If the title fees and escrow fees are not paid as required, then GIT-Escrowee may terminate this Agreement by giving thirty (30) days notice to OWNER and LENDER.

### **NO THIRD PARTY RIGHTS CREATED BY THIS AGREEMENT**

It is the intention of all the parties to this Agreement that under no circumstances are any rights created for persons or entities who are not parties to this Agreement and GIT-Escrowee owes no duty to make disbursements to person or entities not party to this Agreement under a third party beneficiary theory or under any other theory of law.

**GIT-ESCROWEE DISCLAIMERS**

Git-Escrowee does not at any time insure: A. That there will be enough funds available to complete the project; B. That the project will be completed; or C. If the project is completed that it will be completed according to plans and specification approved by OWNER and LENDER.

GIT-Escrowee does not assume any liability for loss caused by errors in certifications provided by others as to work in place.

Dated: \_\_\_\_\_

Owner: \_\_\_\_\_

LENDER: \_\_\_\_\_

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

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

Greater Illinois Title Company

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

The following person or entity states that he, she or it has reviewed this Agreement and acknowledges that he, she or it is not a party to the Agreement and that this Agreement does not confer any benefits, rights, privileges, actions or remedies to any persons or entities other than the OWNER, the LENDER, or GREATER ILLINOIS TITLE COMPANY, under a third party beneficiary theory or under any other theory of law.

GENERAL CONTRACTOR:

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