



Construction Disbursement Agreement

File #: _____ Property Address: _____

Owner: _____ General Contractor: _____

Lender: _____ Escrow Agent: _____

Construction Contract Amount	\$
Deposit (if any) Paid to Contractor	- \$
Escrowed Loan Funds:	= \$
Owner Funds (if any)	+ \$
Total Available Funds:	= \$
Failure to timely complete the above section will result in draw delays	

This Construction Escrow Agreement (“Agreement”) is made this _____ day of _____, 20_____, by and amongst the undersigned parties for the disbursement of construction Loan Funds (“Loan Funds”) and Owner Funds, if any, for the construction of improvements (“Project”) on the Property (“Property”) described in the above referenced title insurance commitment (“Title Commitment”). The Lender will from time to time deposit portions of the Loan Funds with SoDak Title (“Escrow Agent”). Owner or Lender may deliver to Escrow Agent additional available Funds which represent the Owner’s equity contribution to the improvements (“Owner Funds”), including the cost of additions to the Project or cost overruns. The Loan Funds and the Owner Funds, if any, shall be disbursed in accordance with the terms and conditions of this Agreement.

1. **First Disbursement:** Prior to the first disbursement of Loan Funds by the Escrow Agent, the following requirements shall be satisfied:

- Owner shall furnish or cause to be furnished to Lender and Escrow Agent a Sworn General Contractor’s Statement which shall provide the names and addresses of such persons furnishing labor, services and materials for the Project, the kind of labor, services or material to be furnished, and the amounts to be paid pursuant to this Agreement.
- Owner shall furnish or cause to be furnished to Escrow Agent W-9 forms from all payees (General Contractor, Subcontractors and Suppliers). **ALL W-9’S MUST BE SUBMITTED PRIOR TO DISBURSEMENT OF FUNDS.**



2. **Draw Documents:** Prior to each disbursement of the Loan Funds, Owner shall furnish or cause to be furnished to Escrow Agent the following:

- Completed draw request including Tax Identification numbers and addresses
- Sufficient Funds to cover the current disbursement
- Written approval by Owner and Lender of the payment. This is done by signing the completed draw request and by Lender delivering to Escrow Agent the Funds in the amount of the draw. If more than one Owner, the written approval by one Owner shall bind all Owners.
- All lien waivers from previous draws must have been received by payees on new draw prior to receiving Funds on new draw for the limited purpose of enabling Escrow Agent to provide the title insurance coverage to the Lender specified by this Agreement.

Owner and Lender understand and agree that the parties listed on Draw Requests and General Contractors Statement may not include all parties supplying labor and/or materials to the Project. Escrow Agent is not responsible to review any lien waiver from any party not listed on a Draw Request or General Contractor's Statement and is only required to collect such lien waivers needed by Escrow Agent to provide the title insurance coverage to the Lender specified by this Agreement. Owner and Lender acknowledge that any party supplying labor and/or materials to the Project who is not paid in full may have lien rights against the property.

Lender Initials

Owner(s) Initials

3. **Title Search:** Prior to the disbursement of any Loan Funds, Escrow Agent shall determine if any intervening construction liens have been filed against the Property. If an intervening construction lien is discovered, Escrow Agent shall promptly notify Lender and shall at Lender's sole discretion, either: (a) hold the deposited Loan Funds until the construction lien has been disposed of to the satisfaction of the Lender or (b) return the Loan Funds to the Lender. Escrow Agent, prior to each disbursement and subsequent to the issuance of the title policy insuring the Lender's mortgage against the Property ("Loan Policy"), shall endorse or be prepared to endorse the Loan Policy extending the Date of Policy to the date of the disbursement for the limited purpose of insuring the Lender against loss or damage by reason of lack of priority of the lien of the insured mortgage over any lien of the insured mortgage over any lien, or right to a lien, imposed by law for the cost of services, labor or material furnished for improvements on the Property.

4. **Disbursement:** Escrow Agent shall disburse the deposited Loan Funds to:

General Contractor

All parties listed on the Draw Request



NOTE: Escrow Agent may pay directly to the General Contractor, Subcontractors and Suppliers in its sole discretion in order to obtain a waiver of lien or verify payment to a party. Escrow Agent shall not be obligated to make payments directly to General Contractor, Subcontractors and Suppliers unless so required above. The parties acknowledge that Escrow Agent has no duty to investigate any party in the Project to determine the party's financial condition, or the prudence of direct payment.

5. **Final Draw and Prior to Closing:** Prior to the final disbursement of Loan Funds, Owner, Lender, and General Contractor will furnish Escrow Agent the same items listed in Section 2 above. Prior to closing, Owner shall furnish or cause to be furnished a Final Sworn General Contractor's Statement and all final lien waivers for the Project. Escrow Agent is only required to collect such lien waivers needed by Escrow Agent to provide the title insurance coverage to the Lender specified by this Agreement.

6. **Deficiencies in Documents:** If Escrow Agent discovers a mistake or deficiency in any of the documents provided under this Agreement, it may elect not to proceed until the mistake or deficiency has been corrected or cured. Escrow Agent shall have no obligation to investigate or discover misstatements or forgeries in documents, fraud, or misapplication of Funds by any party.

7. **Project Cost Increases:** Escrow Agent shall have no liability to determine whether the Project cost exceeds the undisbursed portion of the Loan Funds. Escrow Agent will notify Owner and Lender of a possible deficiency if a draw request is delivered to the Escrow Agent in an amount Escrow Agent believes exceeds the remaining Loan Funds. Owner or Lender may then; (a) deliver the balance of the necessary Funds or (b) direct Escrow Agent to pay less than the entire draw request amount.

8. **Limits of Escrow Agent's Duties:** The functions and duties assumed by Escrow Agent include only those described in this Agreement. Escrow Agent is not obligated to act except in accordance with the terms and conditions of the Agreement. Escrow Agent does not certify or insure that (a) the Project will be completed, (b) that the Project, when completed, will have been built in accordance with plans and specifications, or (c) that sufficient Funds will be available for completion. Escrow Agent shall not be liable for; (i) any act or omission done in good faith under this Agreement, nor (ii) any loss arising out of loss or impairment of the Loan Funds and/or Owner Funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, nor (iii) loss of documents or Funds while such documents or Funds are not in its custody (documents or Funds deposited in the United States mail shall not be construed as being in the custody of the Escrow Agent).

9. **Inspections:**

- Escrow Agent shall conduct an inspection of the Property if requested by the Lender. Such inspection shall be solely for the Lender's benefit and for the limited purpose of taking digital photographs of the improvements on the Property. The digital photographs shall be forwarded to the Lender for Lender's verification of the status of the Project.
- Owner shall be responsible for making its own inspections of the Project during the course of construction and shall determine to its own satisfaction that the work done, or materials supplied by the General



Contractor and all subcontractors and suppliers have been properly made or supplied in accordance with applicable contracts.

- Owner and Lender acknowledge that: (a) Escrow Agent has not been provided copies of the plans and specifications for the Project and does not certify that the work performed conforms to plans and specifications, (b) Escrow Agent doing the inspections makes no certification as to the workmanship of the Project; (c) Escrow Agent doing the inspection makes no certification as to whether the work on the Property will be completed and all materials will be in place for the Draw Requests and (d) Owner and Lender are not relying on Escrow Agent for inspections for any assurance or opinion other than that stated in this section.

10. **Escrow Fee:** An escrow fee of \$ _____ shall be paid at the time of closing and prior to the first draw disbursement.

11. **Escrow Termination; Resignation of Escrow Agent:** This Agreement shall terminate, and Escrow Agent shall have no further liability under this Agreement, in the event that either (a) Lender fails or refuses to deliver further Loan Funds under this Agreement, or (b) Escrow Agent resigns upon written notice to the Lender. If this Agreement terminates under the Section; Escrow Agent shall return to the parties any documents or Funds in its possession relating to this Agreement.

12. **No Owner Lien Coverage Granted:** The only responsibility of Escrow Agent 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 Escrow Agent to provide Owner with any protection against construction lien claims, either under this Agreement or in a title insurance policy.

13. **No Interest on Escrowed Funds:** All parties acknowledge that no interest will be paid on any Loan Funds while held by Escrow Agent pursuant to this Agreement and that, in addition to the fees payable to Escrow Agent for its services, Escrow Agent may receive ancillary benefits from the use of the Loan Funds while held in Escrow.

14. **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 Escrow Agent, Lender, and Owner.

I hereby acknowledge that I have read, understand, and agree to the terms of this document on this _____ day of _____, 20 _____.

Owner(s)

Lender

Escrow Agent

