

hold that amount in escrow in accordance with the terms of this Agreement.

3. Preconstruction Obligations of Borrower

A. Prior to commencement of any of the Improvements, Borrower shall provide Lender with a certificate of insurance insuring Lender as an additional insured against any liability arising from any injury or damage to any person or property in connection with Borrower's performance of its obligations under this Agreement. This insurance shall be of a comprehensive general liability insurance type, on an any-occurrence basis, with a minimum limit of liability of \$_____, and the premium for this insurance shall be fully paid in advance through _____. (date) This insurance shall be issued by an insurance company licensed to do business in _____ (name of state), and authorized to issue the policy and certificate of insurance.

B. Borrower further agrees to indemnify and hold Lender and Escrow Agent harmless from all claims, actions, causes of action, judgments, damage, injury, loss, liability, costs, and expenses, including but not limited to attorney's fees, expenses, and court costs arising out of or in any way related to the construction and repair of the Improvements as required by this Agreement.

4. Disbursement of Escrow Funds

Escrow Agent shall disburse amounts to Borrower in the amount of the statements submitted as required (in amounts not less than \$_____ on each occasion) from the Escrow Funds in not more than _____ (number) disbursements on receipt of the following:

Copies of statements for the labor, services, or materials with respect to which disbursement is requested, certified by Borrower to be true and correct;

B. Approval of all Improvements then made to the reasonable satisfaction of Lender and its appraiser; and

C. An endorsement, satisfactory to Lender (or its assignee), to the mortgagee title insurance policy insuring the Mortgage, acknowledging the disbursement, and affirmatively insuring that the Premises are free from all liens and claims, including, but not limited to, any claims relating to the construction and repair of the improvements as required by this Agreement.

In no event shall Borrower be entitled to any disbursement from the Escrow Funds so long as there shall exist any event or condition which, with notice, lapse of time, or otherwise, would constitute an Event of Default.

5. Termination of this Agreement

On the full completion of all Improvements to the reasonable satisfaction of Lender and its appraiser and the satisfaction of every other condition set forth in **Section 4** above, Escrow Agent shall disburse all then remaining Escrow Funds to Borrower and this Agreement shall terminate, and no party shall have any further rights, duties, or obligations. If Borrower has not completed the Improvements in accordance with the terms on or before the date set forth in **Section 1**, Escrow Agent shall disburse the remaining Escrow Funds to Lender for application,

in Lender's sole discretion, against any amount owing Lender by Borrower, whether or not the amount is then due.

6. Duties of the Escrow Agent

The duties of Escrow Agent shall be as follows:

A. During the term of this Agreement, Escrow Agent shall hold and disburse the Escrow Funds in accordance with the terms and provisions of this Agreement.

B. Lender and Borrower agree that Escrow Agent assumes no liability in connection with this Agreement except for gross negligence or willful misconduct. Escrow Agent shall never be responsible for the validity, correctness, or genuineness of any document or notice referred to under this Agreement; and the Escrow Agent may seek advice from its own counsel and shall be fully protected in any action taken by it in good faith in accordance with the opinion of its counsel. If Escrow Agent is unable to determine at any time to whom the Escrow Funds should be delivered, or if a dispute develops between Lender and Borrower concerning to whom the Escrow Funds should be delivered, then Escrow Agent shall deliver the Escrow Funds in accordance with the joint written instructions of Lender and Borrower. If such written instructions shall not be received by Escrow Agent within _____ (*period of time*) after Escrow Agent has issued a written request for instructions to Lender and Borrower, Escrow Agent shall have the right to file the Escrow Funds into a court of competent jurisdiction and interplead Lender and Borrower, and then Escrow Agent shall be discharged of any obligation in connection with this Agreement.

7. If Lender shall assign all or any part of its interest in the Note and the Mortgage, the assignee shall succeed to the rights of Lender under this Agreement.

8. Severability

The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. If any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

9. No Waiver

The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as subsequently waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

10. Governing Law

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of _____.

11. Notices

Any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this Agreement.

12. Attorney's Fees

In the event that any lawsuit is filed in relation to this Agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney fees.

13. Mandatory Arbitration

Any dispute under this Agreement shall be required to be resolved by binding arbitration of the parties hereto. If the parties cannot agree on an arbitrator, each party shall select one arbitrator and both arbitrators shall then select a third. The third arbitrator so selected shall arbitrate said dispute. The arbitration shall be governed by the rules of the American Arbitration Association then in force and effect.

14. Entire Agreement

This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation, in any way, received prior to the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

15. Modification

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

WITNESS our signatures as of the day and date first above stated.

(Name of Lender)

(Name of Escrow Agent)

By: _____

By: _____

(Printed name & Office in Corporation)

(Printed name & Office in Corporation)

(Signature of Officer)

(Signature of Officer)

(Printed Name of Borrower)

(Signature of Borrower)