

Escrow Deposit with Indemnity Agreement

Date: _____

Title No. _____

DEPOSITOR: ___ Buyer ___ Seller ___ Borrower
(Check One)

AMOUNT DEPOSITED: \$ _____

PRE-PAID FEE: \$ _____

Name _____

PREMISES AFFECTED: _____

Address _____

Address _____

City, State, Zip Code _____

City, State, Zip Code _____

Phone Number _____

County _____

Social Security Number _____

Sec. _____ Block _____ Lot _____

DEPOSITOR hereby deposits into escrow with _____ (hereinafter referred to as the "Company") and the Company hereby acknowledges receipt of the sum of _____ (\$ _____), (hereinafter referred to as the "Deposit") from Depositor for the purposes set forth below and upon the terms and conditions set forth on the reverse side hereof, which terms and conditions are incorporated herein and made a part hereof. The Depositor hereby specifically authorizes the company to use the Deposit to:

(A) ___ PAY, satisfy, discharge or otherwise dispose of the following lien(s) or encumbrance(s) which affect the Premises set forth above:

Table with 3 columns: Lien(s) or Encumbrance(s), Amount of Lien or Encumbrance, Amount to be held in Escrow. Rows 1-3.

OR TO

(B) ___ HOLD the Deposit in escrow as security and indemnity for the production by the Depositor to the Company of appropriate proof discharging or satisfying by payment or otherwise the following lien(s) or encumbrance(s):

If the Depositor fails to provide the Company with proof of Depositor's cure, removal or complete disposition of the lien(s) or encumbrance(s) set forth under (B) above within ___ days of the date hereof, then the Depositor, without any further or additional notice from the Company, hereby authorizes and fully empowers the Company to pay, satisfy or otherwise discharge such lien(s) or encumbrance(s). The determination of the appropriateness, sufficiency or acceptability of any proof disposing of a lien or encumbrance provided by the Depositor to the Company shall be solely within the Company's discretion. The Company agrees to refund the balance of the Deposit (less the Company's fees, charges, costs and expenses) to the Depositor upon the cure, removal, record discharge or satisfaction of the lien(s) or encumbrance(s) set forth above. The refund will be check made payable to the Depositor as named and set forth above and shall be delivered to the ___ Depositor, ___ Depositor's Attorney or ___, Other _____.

Depositor _____

Depositor _____

Depositor's Attorney _____

Attorney's Address _____

Attorney's Phone Number _____

By: _____

For: (Agent's Name) _____

Note to Closer: Only bank, certified or cashier's checks are acceptable to fund the Deposit. Business, personal and third party checks are not acceptable. All checks must be made payable to Agent.

If the Depositor is a corporation, limited liability company, limited liability partnership, limited partnership or general partnership where not all of the partners are executing this Agreement, then the following individual guaranty must be signed:

Individual Guaranty

To induce the Company to enter into this Escrow Deposit with Indemnity Agreement, the undersigned unconditionally guarantees the performance of all the obligations of the Depositor hereunder.

Guarantor's Signature _____

Guarantor's Address _____

Guarantor's Name (Print or Type) _____

Guarantor's Phone Number _____

Guarantor's Social Security Number _____

Note: Terms and Conditions on reverse side

TERMS AND CONDITIONS

The following Terms and Conditions govern this Escrow Deposit Agreement:

1. Depositor acknowledges making the Deposit and Company accepts the Deposit at the request of and for the accommodation of the Depositor and as an inducement to Company to issue its policy of title insurance to Company's insured without exception for the lien(s), encumbrance(s) or objection(s) to title set forth on the cover page hereof. Company shall have the right to issue reinsurance, indemnification and/or benefit letters in regards to such lien(s), encumbrance(s) or objection(s) affecting the Premises to other insurers based on the Deposit. In such event, the Depositor authorizes the Company to continue to hold the Deposit in escrow until the lien(s), encumbrance(s) or objection(s) to title are disposed of in accordance with the Terms and Conditions of this Agreement. In regards to the Deposit, Depositor acknowledges that the Company acts as a stakeholder only. In the event that the Company receives any conflicting instructions in regards to the Deposit, the Depositor specifically authorizes the Company to continue to hold the Deposit in escrow and not disburse the Deposit unless and until the conflict is resolved as determined by the Company in its sole discretion.
2. In the event that the Depositor fails to comply with its obligations as set forth on the cover sheet hereof, or with these Terms and Conditions, or if the Company deems it necessary or advisable to act to protect its insured interests in the Premises, or the marketability of title of the Premises, Depositor authorizes the Company, without notice to the Depositor, to cure, remove, compromise, pay, satisfy, discharge or otherwise dispose of the lien(s), encumbrance(s) or objection(s) to title affecting the Premises, to retain counsel in connection therewith, and to pay out of the Deposit any and all of Company's expenses, disbursements, counsel and legal fees together with interest on all such amounts at the prevailing rate, incurred in connection with such action.
3. Depositor acknowledges that if the Deposit is taken for more than one purpose, or for the satisfaction or discharge of more than one lien, encumbrance or objection to title, then, in the absence of an agreement to the contrary, the allocation of the funds within the Deposit among the several purposes, or for the satisfaction or discharge of the liens, encumbrances or objections to title, is at the sole discretion of the Company. Further, if additional liens, encumbrances or objections to title are discovered by or brought to the Company's attention, Depositor authorizes the Company to use the funds in the Deposit to cure, remove, compromise, pay, discharge, or satisfy such additional lien(s), encumbrance(s) or objection(s) to title.
4. Depositor agrees to pay, upon the Company's written demand, any deficiency or shortage which may arise in the Deposit, if the Deposit is insufficient to cure, remove, compromise, pay, satisfy, or discharge any lien(s), encumbrance(s) or objection(s) to title covered hereby or to reimburse the Company for any of Company's charges, fees, expenses (including, but not limited to court costs, legal fees and expenses) and costs incurred to satisfy or fulfill any of Depositor's or Company's obligations under this Agreement. If the Company shall sustain a loss because the amount of the Deposit was insufficient or for any other reason, Depositor agrees also to pay interest on the amount of such loss at the then prevailing legal rate per annum, such interest to accrue from the date of demand.
5. In consideration of Depositor's obligations and of the liability and other obligations assumed by Company under this Agreement, Depositor hereby assigns to the Company a security interest in the Deposit superior to all other liens and claims. Depositor further acknowledges that this Agreement shall not give rise to any causes of action in favor of a lien or another party against the Company or the Deposit pursuant to this Agreement. If any such claim or lien shall arise then Depositor agrees that Company may offset, charge against and reimburse itself from the Deposit for any cost, expenses (including, but not limited to, court costs, legal fees and expenses) which Company may incur because of or arising from any defense or prosecution Company must undertake to protect the Deposit or the interests of its insured under the title policy.
6. _____ (A) Unless paragraph (B) is checked below, Depositor acknowledges and specifically agrees that Company is under no duty under this Agreement to invest or reinvest the Deposit at any time or in any manner. Company may commingle the Deposit with other deposits or with its own funds and may invest any part or all such funds for its own benefit and shall have no obligation to Depositor for any interest or earnings derived thereby. _____ (B) The Depositor, by checking this paragraph (B) specifically requests the Company to place the Deposit in an interest bearing account. Depositor agrees to submit a fully completed and executed Federal Form W-9 (Request for Taxpayer Identification Number and Certification) to Company with this Agreement. Until the Company receives the Form W-9, Company has no obligation to place the Deposit in an interest bearing account. All interest bearing accounts shall be held in and deposited with financial institutions commonly used by the Company and the selection of such institutions and instruments shall be in the Company's sole discretion. Although Company shall use its best efforts to place the Deposit in an account paying a reasonable rate of interest, Company shall have no responsibility for selecting financial institutions or instruments which do not pay the highest interest rate then available. If Depositor directs that the Deposit be placed in an interest bearing account, then, in addition to the fees and charges normally assessed hereunder, Depositor agrees to pay (1) Company an annual fee of \$_____ for maintaining and servicing the account as well as (2) any other fees or charges imposed by the financial institution holding the account. The initial annual fee will be assessed and payable on the date of this Escrow Deposit with Indemnity Agreement and on the annual Anniversary date of this Agreement thereafter. Depositor authorizes the Company to deduct the service charge directly from the Deposit. Upon written notice to the Depositor, the Company may change or amend the amount of, and the terms and conditions pertaining to Company's annual service charge as set forth under this paragraph.
7. Depositor acknowledges and agrees that Company shall have no liability in the event of the failure or insolvency of the Company bank or other institution in which the Deposit is held.
8. Upon the full compliance of Depositor's obligations under this Agreement as well as the Terms and Conditions hereof, Company shall refund to Depositor any funds remaining in the Deposit. However, Depositor authorizes Company to retain as an additional service charge, any balance of \$_____ or less remaining in the Deposit after the payment of all obligations, charges, fees and expenses. Depositor further authorizes Company to, at anytime and at Company's sole discretion, but upon Company's written notice to Depositor, to use any funds remaining in the Deposit to offset any amounts owed to Company by Depositor.
9. Depositor authorizes Company to charge an annual service charge in an amount to be determined by the Company for maintaining the Deposit. In the event that Depositor fails to perform its obligations hereunder or if Company, in order to protect its insured's interest in the Premises, the marketability of title in and to the Premises, or the Deposit itself, must perform additional administrative tasks hereunder (such as, but not limited to, title examinations, tax searches, or examinations and correspondence undertaken in order to comply with (Abandoned Property Laws and Ordinances), then the Depositor authorizes Company to impose, and Depositor agrees to pay as an additional service charge, an amount equal to any and all additional costs, fees or expenses incurred and actually paid by Company. Depositor authorizes Company to deduct the annual and additional service charges directly from the Deposit. Upon written notice to Depositor, Company may change or amend the amount of, and the terms and conditions pertaining to Company's annual service charge.
10. Depositor acknowledges that Depositor is aware that local or State laws relating to escheatment and abandoned property may require the Company to turn over or escheat any unclaimed portion of the Deposit to the locality or State having jurisdiction over the Premises or over the Deposit. Such laws generally require that Company contact Depositor before turning over or escheating the Deposit or any amounts remaining therein to the locality or State. Company hereby agrees to use its best efforts to contact the Depositor by first class mail, postage prepaid forwarded to Depositor's address as indicated on the cover page hereof. Depositor may change Depositor's address on Company's records by letter containing a copy of this Agreement or referencing the title or policy number, directed to Company and marked "Attention: Escrow Department". Depositor acknowledges and agrees that Company will have no liability, and Depositor will make no claim against Company, for any escheatment of funds so long as Company provides notice as set forth above (or in accordance with applicable State or local law) to Depositor and Company escheats the Deposit in accordance with applicable State or local laws.
11. Depositor agrees forever to fully protect, defend, indemnify and hold Company harmless from any loss, liens, claims, costs, expenses (including, but not limited to, court costs, legal fees and expenses), or damage which Company may incur as a result of Company's acceptance of the Deposit or from Company's performance of any of its obligations hereunder (including, but not limited to, any action taken by Company to cure, remove, compromise, satisfy, discharge, or dispose of any lien, encumbrance or objection to title affecting the Premises.
12. The Depositor specifically authorizes the Company to initiate an interpleader action or similar proceeding in any court to interplead all relevant parties and deposit the Deposit in such court pending the resolution of any conflict involving the Deposit. In such event, the Depositor specifically authorizes the Company to deduct from the Deposit prior to forwarding the Deposit to the court, and any and all fees, expenses (including, but not limited to, court costs, legal fees and expenses) and costs which the Company incurs because of, or arising from the conflict or the interpleader proceeding.
13. The Company, in its sole discretion, has the right to select and to retain counsel to defend any action brought by any party as a result of or arising from Company's acceptance of the Deposit, including, but not limited to, the Company's issuing its title policy without showing the exception to title, or insuring over the exception or to bring any action or to perform any work to correct the matters shown in the exception. Depositor agrees to pay the fees, expenses and costs of any counsel so selected by the Company.
14. Depositor acknowledges that the waiver by Company of any particular provision of this Agreement shall not constitute a waiver of any other provision contained herein. In the event that any provision of this Agreement is held to be unenforceable, all other provisions hereof shall remain in full force and effect. Where appropriate, all terms herein referencing the singular shall also include the plural and vice-versa. If there is more than one Depositor hereunder, then each Depositor's liability hereunder shall be joint as well as several. The phrase "Company's sole discretion" as used herein means the Company's absolute subjective discretion.
15. Depositor acknowledges that this Deposit Agreement constitutes the entire contract between the Depositor and Company in regards to the Deposit, and that this Agreement shall not be modified except by an Agreement in writing signed by all parties hereto.
16. Written notice hereunder shall be deemed to have been duly delivered if forwarded by first class mail, postage prepaid, to the Depositor at the address first above written on the reverse side hereof.
17. This Agreement may not be assigned nor transferred by the Depositor.