

# AGREEMENT TO PROCURE A LENDER & BORROWER ESCROW INSTRUCTIONS

This AGREEMENT is made and entered into on <f29> by and between <f80> ("COMPANY"), <f81>, <f82>, <f83> and <f5> <f6> <f7> <f8> <f10> <f11> <f12> ("BORROWER").

1.0 BORROWER grants to COMPANY the exclusive right to obtain a loan secured by the Pledged Property identified below. This loan will be made or arranged according to the terms contained in the Mortgage Loan Disclosure Statement ("Disclosure") attached.

<f18>, <f19> - Pledged property address ("Pledged Property")

### DISCLOSURE OF DUAL AGENCY

2.0 In addition to acting for BORROWER, COMPANY may act for itself for another lender. COMPANY may lend its own funds, funds which it controls or obtain loan funds from or assigns loans to any of the following: (1) Private parties; (2) Institutional lenders; (3) Governmental agencies.

2.1 COMPANY may collect payments and enforce remedies for its own account or for another lender, and may be compensated for these services.

3.0 COMPANY agrees to use its best efforts to secure a lender willing and able to make the subject loan, or it may make said loan in which or in part with broker-controlled funds as defined in Section 10241(j) of the Business and Professions Code.

4.0 Loan approval shall be at the sole discretion of COMPANY.

5.0 BORROWER agrees to accept the loan on the terms and conditions set forth in the Disclosure attached, as well as those set forth herein below. Rights and additional disclosures will be provided if required by the Federal Truth in Lending Law (Regulation Z), and/or the Real Estate Settlement Procurement Act (RESPA).

### THIS IS NOT A COMMITMENT TO FUND THE LOAN

6.0 BORROWER absolves COMPANY of any liability if it does not make the subject loan with funds that it controls, or as agent for BORROWER, it is unable to find a lender willing and able to make the loan.

### LIABILITY OF BORROWER FOR FAILURE TO DISCLOSE

7.0 If the loan is not consummated because BORROWER failed to disclose all outstanding liens of record, or other information essential to either making or arranging the loan, or if BORROWER fails to complete the loan in accordance with the Disclosure and the terms contained herein, BORROWER must then pay the actual expenses incurred by COMPANY, its commission or loan origination fee, and attorney's fees to the extent allowed by law.

### ARBITRATION OF DISPUTES

8.0 All controversies or claims between the parties hereto including COMPANY arising out of or relating to the loan contemplated by this agreement, including but not limited to the arranging thereof, documents relating thereto, and the servicing and enforcement thereof, shall be determined by arbitration in accordance with applicable rules of the American Arbitration Association. Judgment on the arbitrators' award may be entered in any court having jurisdiction. Without waiving a party's right to arbitration any party may apply to any court of competent jurisdiction for the following: (a) to enforce the assignment of rents provision contained in any deed of trust securing the loan, including the appointment of a receiver; (b) to secure possession of the real property subject to the deed of trust by an action for unlawful detainer; or to commence an action in interpleader for the sole purpose of resolving conflicting claims to funds, documents or instruments deposited in escrow. Any proceeding for judicial foreclosure shall not be subject to arbitration. The exercise of the power of sale contained in the deed of trust securing this loan, or the exercise of any private default remedies under the Uniform Commercial Code shall not constitute a waiver of this agreement to arbitrate nor shall they be deemed inconsistent with arbitration.

**NOTICE: By initialing in the space below you are agreeing to have any dispute arising out of the matters included in the 'Arbitration of Disputes' provision decided by a neutral arbitration as provided by California law and you are giving up any rights you might possess to have the dispute litigated in a court or jury trial. By initialing in the space below you are giving up your judicial rights to discovery and appeal, unless such rights are specifically included in the 'Arbitration of Disputes' provision. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the California code of civil procedure. Your agreement to this arbitration provision is voluntary.**

**We have read and understood the foregoing and agree to submit disputes arising out of the matters included in the 'Arbitration of Disputes' provision to neutral arbitration.**

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Initial

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Initial

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Initial

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Initial

### **BORROWER ESCROW INSTRUCTIONS**

9.0 COMPANY IS NOT A PUBLIC ESCROW; pursuant to the provisions set forth in the Financial Code, Section 17006, Brokers Exemption to Escrow Law, it acts in the capacity of escrow holder.

10.0 "Opening of Escrow" shall mean and refer to the date on which an executed copy of this Agreement, the Mortgage Loan Disclosure Statement (Borrower), promissory note, and deed of trust have been deposited by COMPANY.

11.0 BORROWER and COMPANY shall execute any additional instructions consistent with this Agreement, which are necessary in connection with this escrow.

12.0 The subject of this escrow is a loan secured by the Pledged Property pursuant to the terms and conditions of the attached State Disclosure, and Disclosure under the Federal Truth in Lending Law (Federal Reserve Regulation Z).

13.0 Interest on the subject loan begins to accrue from the date all loan funds are deposited to COMPANY'S escrow trust account, which may be earlier than the close of escrow.

14.0 BORROWER deposits the following documents in escrow:

14.1 BORROWER authorizes COMPANY to use the note, as well as other documents deposited to this escrow, and to record the deed of trust deposited, as well as any other "recordable" documents as described in paragraph 14.0 above, when it has satisfied BORROWER'S ESCROW INSTRUCTIONS/CLOSE OF ESCROW, below.

14.2 BORROWER authorizes COMPANY to obtain a credit report, divulge its contents to the lender either orally or by sending a copy of the report to lender.

14.3 Lender's approval of these Escrow Instructions shall constitute BORROWER'S agreement to borrow and Lender's agreement to lend on the terms and conditions contained in the Disclosure.

### **BORROWER ESCROW INSTRUCTIONS/CLOSE OF ESCROW**

15.0 Escrow shall be closed when each of the following instructions have been complied with, and the required acts have been done, unless waived in writing:

15.1 COMPANY is instructed to obtain \_\_\_\_\_ policy. BORROWER warrants that this policy will show that the deed of trust referenced in paragraph 14.0 above, is subject to the following: Real property taxes and assessments that are not delinquent, easements, right of way, covenants and restrictions which do not materially impair the marketability of the property.

15.2 COMPANY to verify that the principal owed on the encumbrances that are to remain of record at the close of this escrow do not exceed those stated on the Disclosure.

15.3 BORROWER is to show evidence of fire insurance in an amount sufficient to cover Lender's interest with extended coverage naming the beneficiary, if name is available, or COMPANY as nominee in place or stead as loss payee.

15.4 COMPANY is instructed to insert the lender's name in the Note, Deed of Trust, and Request for Written Notice of Delinquencies Pursuant to Civil Code Section 2924e, and insurance policies, when applicable.

15.5 COMPANY is instructed to complete the Deed of Trust by filling in the legal description of the Pledged Property if necessary.

15.6 COMPANY is instructed to complete the Request for Notice of Default, when applicable.

15.7 BORROWER authorizes COMPANY, at its discretion, to send the following documents to the lender(s): (1) original promissory note, (2) recorded Deed of Trust and Request for Notice of Default, (3) fire insurance policy or endorsement, and (4) title insurance policy.

### **BORROWER AUTHORIZED DISBURSEMENTS AT CLOSE OF ESCROW**

16.0 BORROWER instructs COMPANY to disburse interest to the lender(s) from the proceeds of the subject loan, from the date all loan funds have been deposited to the date of the closing of this escrow.

16.1 BORROWER further instructs COMPANY to disburse the actual processing charges, costs, expenses and commissions or loan origination fees to COMPANY whether or not consistent with estimates contained in the Disclosure Statement.

16.2 COMPANY may rely on statements from creditors, to pay from the proceeds of the subject loan, all payments estimated in the Disclosure.

16.3 At the close of escrow, COMPANY is instructed to disburse payments from the loan proceeds, and to pay in full taxes, assessments, bonds, and/or encumbrances to be extinguished from the records, and to bring current, if delinquent, taxes, assessments, bonds and/or encumbrances that are to remain of record.

### **GENERAL INSTRUCTIONS**

17.0 Mail any papers and funds due BORROWER to the "Mailing Address" below.

17.1 COMPANY is authorized to deposit any funds or documents and demands with any bank, escrow company, title company or any other person or entity, subject to COMPANY'S demand. All documents and instructions in this escrow shall be maintained and/or destroyed at any time after 5 years from the date this loan is paid in full or sooner, provided COMPANY has prepared and maintained a reproducible image thereof.

18.0 COMPANY shall not be liable for the failure of any condition of this escrow; damage caused by the exercise of discretion; failure to ascertain or comply with the provisions of any document deposited in escrow; forgeries or false personations; incapacity of parties or false verifications or affidavits.

19.0 COMPANY is not required to determine controversies between parties and third persons or take any actions, but may at its option, seek or await settlement by arbitration (see Page 1 of this Agreement, Paragraph 8.0) or by judicial interpleader. In such event COMPANY shall not be liable for interest or damages.

20.0 Lender at its sole option, may waive requirements of any insurance and/or the priority of the Note and Deed of Trust over any or all liens, charges and/or encumbrances affecting the Pledged Property.

21.0 This Agreement shall be for a period of 45 days, ending on .

22.0 BORROWER is aware that COMPANY and «f52» are held under the same or substantially similar ownership and is further aware that «f80» may earn a commission for any life or disability insurance written in connection with this loan and «f80» may earn Trustee's Fees in connection with this loan.

23.0 It is understood and agreed that these Escrow Instructions contain the complete and entire agreement and understanding between the parties hereto, and supersede any other agreement or understanding whether oral or written. By executing these Escrow Instructions, BORROWER acknowledges BORROWER does not rely upon any oral agreement or representation not contained herein, and further agrees BORROWER shall not hereafter rely upon any oral agreement or representation concerning this loan.

23.1 These Escrow Instructions may be altered, amended, or changed by COMPANY only by subsequent written instrument, prior to the execution of these Escrow Instructions by both BORROWER and Lender. Thereafter, these Escrow Instructions may be altered, amended, or changed only by subsequent written instrument executed by both BORROWER and Lender, except as to the disbursement of loan proceeds, which may be altered, amended or changed by BORROWER alone.

24.0 Lender shall have the right of assignment of substitution without further notice or consent of the BORROWER. Upon such assignment or substitution such assignee or nominee by substitution shall be substituted in the place and instead of the Lender in all respects as though the assignee or nominee had originally entered into this escrow agreement, and you are authorized to accept further instructions, if any, of such assignee or nominee without any approval of BORROWER. You are instructed to issue a check for the balance of Loan proceeds to BORROWER'S account. All disbursements out of this Escrow shall be made by check. Each BORROWER named as payee in the check must personally endorse the check in order to negotiate the check.

**DO NOT SIGN THIS AGREEMENT UNTIL YOU HAVE READ AND UNDERSTAND ALL OF THE INFORMATION ON IT. BORROWER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT**

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«f5» «f6» «f7» - Borrower/Date

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«f10» «f11» «f12» - Borrower/Date

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Borrower's Mailing Address

«f80»

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Broker Signature

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