

Construction Liens and Disbursing in Wisconsin

Presented by

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ATG LEGAL EDUCATION

Overview

- **Title insurance companies and title agencies enter into construction escrows when money is being lent to build a home or other structure.**
 - Due to the possibility that this process will result in a construction lien being filed, the lender is unwilling to trust the borrower with the mortgage funds prior to or during construction.

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Overview

- **Title insurance companies and title agencies enter into construction escrows when money is being lent to build a home or other structure.**
 - Instead, the lender insists that their funds be disbursed by the escrow department of a title insurance company or agent.

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Overview

- This construction disbursement (escrow) process allows the lender to deposit the funds with the escrowee in installments for disbursement to the contractors.

Overview

- In return, the escrowee insures that the lender will be protected from construction liens.

Overview

- The escrowee, the owner, and the lender set forth the specific terms of this arrangement in the Construction Loan Escrow Disbursement Agreement.

Overview

- **The escrow agent does not insure that the building will be completed, that it will conform to the plans and specifications, or that sufficient funds will be available to complete the work.**

Overview

- **In Wisconsin, the ability to insure lenders against the construction lien risk is enhanced by the provisions of Wisconsin Statutes Section 706.11.**
 - This statute provides that most institutional lenders (“priority lenders”) do not run the risk of having construction liens prime their loan unless the actual construction lien is filed prior to the recording of their mortgage.

Overview

- **Construction liens are created pursuant to the provisions of Wisconsin Statutes Chapter 779.**
 - This statute section creates lien rights for persons who improve real estate but do not receive payment.
 - This places such persons into a special legislative class in that not everyone who provides a product or service is entitled to obtain a lien on real estate unless and until a judgment is entered in their favor.

Overview

▪ **Construction liens are created pursuant to the provisions of Wisconsin Statutes Chapter 779.**

- This statute section creates lien rights for persons who improve real estate but do not receive payment.
 - If the lien is perfected (by following a strict statutory procedure) the lien is an encumbrance sharing the same status as, for example, a mortgage.

Overview

▪ **The theory behind Chapter 779 is that the legislature believes that people who improve real estate deserve special treatment because they do not have the option of taking back or “repossessing” their work (like a creditor can for an unpaid auto loan).**

Overview

▪ **Counterbalanced with this idea is the common sense and fairness principle that an owner of real estate should not be required to pay for the same work twice.**

Overview

- In the mid 1980s, the Wisconsin Land Title Association, together with several other trade groups, was instrumental in amending 706.11 so as to blend it with 779 and balance these two concerns into the present state of the law.

Overview

- While the legislature feels that persons who improve real estate provide valuable services and should be given special treatment, it is also felt that lenders deserve consideration.

Overview

- **Most lenders enjoy statutory priority over unfiled construction liens under Wisconsin Statutes Section 706.11.**
 - Lenders, it is felt, must be able to lend money for the purchase and or improvement of real estate with some assurance and certainty that the priority of their mortgage will be preserved.

Overview

- **Chapter 779 is a complicated and highly technical set of procedures and notice time frames.**

- If the statutory requirements are not met, the lien claimant loses the protections the chapter intends to afford.

- There is no remedy in equity, for example, if a notice requirement or time deadline is missed.

Overview

- **Chapter 779 is a complicated and highly technical set of procedures and notice time frames.**

- Title insurers are frequently asked to disregard or “delete” filed construction liens when evidence is presented that a notice requirement was missed.

- That fact, even if true, does not prevent the lien from being filed and a title insurer who agrees to delete the lien on that basis has now volunteered to pay for the litigation to defend against the lien.

Overview

- **For the owners and non-priority lenders, a construction lien is effective as of the date work commenced as opposed to when the lien is actually filed.**

- **Construction liens are inchoate or “hidden” lien rights.**

Overview

- **The lien claimant does not have to file the lien until six months after the last day on the job.**
 - The lien then has priority from the “visible commencement of the improvement.”

Overview

- **The lien claimant does not have to file the lien until six months after the last day on the job.**
 - While the lien can be filed up to six months *after* the last day of work, the lien has an effective date of the date work commenced.
 - The lien claimant has two years after the filing of the construction lien to commence an action to enforce it.

Overview

- **There are several other notice requirements.**
 - For example, the lien claimant must give notice that he intends to file a lien 30 days before he actually files the lien.

Overview

- **There are several other notice requirements.**
 - Any failure to comply with a notice requirement means that the lien will ultimately be held to be unenforceable.
 - That determination, however, is for a court rather than a title insurer to make.

Overview

- **Simply put, a construction lien has a retroactive effective date.**
 - The construction lien exposure for owners and non-priority lenders is very great.
 - The risk for priority lenders is very manageable.

Wisconsin Construction Lien Law Summary

- **The law grants a lien right to a party that performs work or supplies materials for the improvement of real estate.**

**Wisconsin Construction Lien
Law Summary**

- **The construction lien attaches to all interests in the land belonging to its owners and extends to all contiguous land of the owner.**
 - If the improvement is located entirely on one or more platted lots belonging to the owner, the lien only affects the lots on which the improvement is located. [Sec. 779.01(3)].

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**Requirements for a Valid,
Enforceable Lien**

- **A prime contractor, who is not the owner, must give to the owner, in the written contract with the owner, a written statement notifying the owner that persons or companies furnishing labor, supplies, or material may have lien rights if they are not paid.**
 - If there is no written contract, the prime contractor must nevertheless give the owner this notice in writing within 10 days after work on the site begins.

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**Requirements for a Valid,
Enforceable Lien**

- **A prime contractor, who is not the owner, must give to the owner, in the written contract with the owner, a written statement notifying the owner that persons or companies furnishing labor, supplies, or material may have lien rights if they are not paid.**
 - Every other person (other than the prime contractor) who furnishes labor or materials for the job must notify the owner in writing within 60 days after furnishing their first labor or material that said person has performed work on the job.
 - This notice does not apply to the direct employees of the contractor or subcontractors.

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Requirements for a Valid, Enforceable Lien

- **A prime contractor, who is not the owner, must give to the owner, in the written contract with the owner, a written statement notifying the owner that persons or companies furnishing labor, supplies, or material may have lien rights if they are not paid.**

– These notices are also not required when the improvement being built consists of more than four family living units or, in any case, if the improvement is partly or wholly nonresidential [779.02(1)(c)].

- In other words, on residential deals, the owner must be told who is doing the work on his site by those who are expecting to get paid.

Requirements for a Valid, Enforceable Lien

- **No construction lien claim may be filed unless, at least 30 days before the filing of the lien, the claimant serves on the owner a written Notice of Intent to file the lien.**

– The Notice must contain the nature of the work performed or material furnished, the land to which the lien will attach, and the amount claimed is owed.

- In other words, the lien claimant must give the owner one last chance to pay the bill before he files the lien.

Requirements for a Valid, Enforceable Lien

- **The construction lien must be filed in the office of the Clerk of the Circuit Court of the county in which the land affected lies within six months from the date the claimant furnished the last labor or materials. [Sec 779.06(1)]**

– The effective date of the lien relates back to the date visible commencement of work started by any person or company.

Requirements for a Valid, Enforceable Lien

- The lien expires (is no longer enforceable and can be ignored) if an action is not brought to foreclose the lien within two years of the date of the filing of the lien unless the time period has been suspended (statute of limitations tolled) by the pendency of an action to foreclose another lien. [Sec 779.06(1)]

Requirements for a Valid, Enforceable Lien

- **The filed lien must contain:**
 - a statement of the contract or the demand upon which the claim is founded;
 - the name of the person against whom the claim is made;
 - the name of the claimant;
 - the last date of the performance of labor or furnishing of materials;
 - the legal description of the property; and
 - all other material facts and must be signed by the claimant or his attorney.

Requirements for a Valid, Enforceable Lien

- Copies of the required Notices (60-day, 30-day) must be attached to the lien. [Sec. 779.06(3)]

Requirements for a Valid, Enforceable Lien

- Construction liens are foreclosed in generally the same manner as mortgages under Wisconsin Statutes Chapter 846.
 - After a judgment of foreclosure of a construction lien, however, there is no period of redemption.
 - After notice to all proper parties, an immediate sale is directed.

Requirements for a Valid, Enforceable Lien

- Sec 779.08 provides a method of clearing the lien from the real estate by depositing an undertaking in 125% of the amount of the lien with the clerk of court in the office where the lien is filed.
 - Upon receipt of the cash or government bond in that amount, the clerk satisfies the lien of record.

Statutory Priority

- Most institutional lenders are protected from the hidden danger of a lien filed today for work performed months ago.

Statutory Priority

- In order to determine whether or not a particular lender enjoys statutory priority, reference to Wisconsin Statutes Section 706.11 is suggested.

Statutory Priority

- However, the following classes of lenders are exempt for the “secret lien” of unfiled construction liens over recorded mortgages. If their mortgage is recorded before the lien is filed, their mortgage has priority over the lien.

– NOTE: Statutory priority lenders must still state on the first page of the mortgage [707.11(1m)(3)] that the instrument is a “construction mortgage.”

Statutory Priority

- However, the following classes of lenders are exempt for the “secret lien” of unfiled construction liens over recorded mortgages:

– Any mortgage executed to a federal savings and loan association or state or federal savings bank.
– Any mortgage executed to the Department of Veteran Affairs under 45.352, 1971 Stats.

Statutory Priority

▪ **However, the following classes of lenders are exempt for the “secret lien” of unfiled construction liens over recorded mortgages:**

- Any mortgage assigned to or executed to any of the following:
 - The United States, this state, or a county, city, village, or town in this state, or an agency, department, or other formally constituted subunit of any of the foregoing.

Statutory Priority

▪ **However, the following classes of lenders are exempt for the “secret lien” of unfiled construction liens over recorded mortgages:**

- Any mortgage assigned to or executed to any of the following:
 - The Wisconsin Health and Educational Facilities Authority created under Chapter 231, the Wisconsin Housing and Economic Development Authority created under Chapter 234, or any other authority created by state law.

Statutory Priority

▪ **However, the following classes of lenders are exempt for the “secret lien” of unfiled construction liens over recorded mortgages:**

- Any mortgage executed to a state or national bank or to a state or federally chartered credit union.
- Any mortgage executed under s. 66.1103 to a trustee, as defined in s. 66.1103 (2)(n).

Statutory Priority

▪ **However, the following classes of lenders are exempt for the “secret lien” of unfiled construction liens over recorded mortgages:**

- Any mortgage executed to a mortgage banker, as defined in s. 224.71(3).
- Any mortgage executed to an insurer licensed to do business in this state.
- Any mortgage executed to a licensee under 138.09.

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Statutory Priority

▪ **If you are in doubt as to whether or not the lender enjoys statutory priority, or as to whether the mortgage otherwise complies with 706.11 so as to enjoy this status, please call the ATG Wisconsin office for assistance.**

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New Wisconsin Forms

▪ **There are four new construction escrow forms for use in Wisconsin:**

- Construction Loan Escrow Disbursement Agreement – Wisconsin (ATG Form 4024-WI);
- Disbursement Endorsement – Wisconsin (ATG Form 2129-06-WI);
- Owner’s Payment Authorization – Wisconsin (ATG Form 4114-WI); and
- Final Waiver of Lien and Contractor’s Affidavit (ATG Form 3005).

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New Wisconsin Forms

- We recommend that the use of these and all other ATG Forms be encouraged whenever as possible, but we are aware that our customers may insist that we use their form(s) instead.

New Wisconsin Forms

- If you are being requested to use another form(s), please forward that form to the ATG Wisconsin office and we will review the form to determine whether it is acceptable.
- If the form is acceptable “in substance,” we will try to approve it or make suggested amendments or additions.

Required Documents and Procedures

- **Construction Loan Escrow Disbursement Agreement – Wisconsin (ATG Form 4024-WI)**
 - This is the cornerstone of the process and the roadmap of the procedures to be followed.
 - *Disbursing of funds cannot be done without a signed Disbursement Agreement.*

Required Documents and Procedures

- **Construction Loan Escrow Disbursement Agreement – Wisconsin (ATG Form 4024-WI)**
 - The agreement sets forth all the rights, duties, and responsibilities of the parties. These terms and conditions are set forth in numbered paragraphs in the attached form, so they will not be repeated at length in this memo.

Required Documents and Procedures

- **Construction Loan Escrow Disbursement Agreement – Wisconsin (ATG Form 4024-WI)**
 - However, at a minimum, a disbursement agreement must cover the following subjects:
 - A description of the extent of lien coverage;
 - Inspections;
 - Statement of liability limitations (e.g., escrowee does not guarantee completion or quality of work);
 - Escrow disbursement fees and expenses.

Construction Loan Escrow Disbursement Agreement – Wisconsin ATG Form 4024-WI (page 1 of 5)

ATTORNEYS' TITLE GUARANTY FUND, INC.
CONSTRUCTION LOAN ESCROW DISBURSEMENT AGREEMENT – WISCONSIN

Consentment Policy No. _____

1. This agreement sets forth the instructions from Lender and Owner to Escrowee for the disbursement of construction loan funds and other items from the disbursement of escrow payments to the project identified in the aforementioned title insurance commitment as party (the "Project"). The Lender will, from time to time, deposit a total of \$_____ (the "Total Loan Fund") _____ (the "Owner's") Total Loan Fund into the Escrow Bank of the Owner, which represents the Owner's equity contribution to the improvement, including the cost of address the Project and escrow. The Escrow Contract is to be _____.

2. Escrowee is authorized and directed to disburse the funds deposited hereunder in the following manner:

- pay costs of construction of an improvement (the "Improvement") to be erected on the Premises;
- advance release and satisfaction of liens and other encumbrances, if any, personal to encumbrance of amount due, which must be approved by Owner and Lender; and
- pay all other amounts as are approved by Owner and Lender.

3. **Draws.** There will be _____ disbursements (the "Draws") during the Construction, which are to be made in accordance with the terms, conditions, and provisions of this Agreement. If not previously received, each Draw shall include a list of _____, payable to Escrowee. All disbursements to the Construction will be made directly to the General Contractor and/or subcontractors, as designated by General Contractor. Additional Draws are _____ per disbursement.

Final Draw. Prior to the last Draw of the funds, escrowee shall be furnished with the following required documents:

- A signed Contract, a sworn Statement (ATG Form 5010-01), and/or other documents to detail the name, address, and telephone number of all contractors with whom the contractor, type of labor and materials to be furnished, amount of the contract (including other and credits), amounts previously paid to date, amounts of current request, work-in-progress to date, and performance fee;
- If applicable, Owner shall furnish Lender and Escrowee an Owner's Sworn Statement (ATG Form 5010-01), disclosing the various contracts entered into by Owner relating to the Construction. Escrowee will also provide copies of the contracts, their address, kind of services, work, or material to be furnished, and the amounts to be paid pursuant to this Agreement;
- Owner shall furnish, or cause to be furnished, an Escrowee Withdrawal Form of payment or release to be signed by Escrowee under this Agreement (including General Contractor, subcontractors, and suppliers). All Withdrawal Forms will be submitted prior to disbursement of funds;
- Owner shall furnish substantial proof that the parties listed on these Registers, Owner's Sworn Statement or General Contractor's Sworn Statement and any other parties supplying labor, services, and/or materials to the Project, Escrowee is not responsible to receive any one source from any party not listed on a Draw Register, Owner's Sworn Statement, or General Contractor's Sworn Statement. Furthermore, notwithstanding the foregoing, Escrowee is only required to collect such fees as are stated or provided for with respect to services or the Lender specified in this Agreement. Owner and Lender acknowledge that any party supplying labor, services, and/or materials to the Project who is not paid in full may have lien rights against the Project;
- Owner, by its failure to obtain insurance which requires to survey matters, Owner or Lender shall furnish to Escrowee a current G.L.S. survey is to understand that the initial survey will depict the boundaries of the proposed improvement and that an "as-built" survey will be furnished once the improvement has been completed. Upon examination and review of the final "as-built" survey and subsequent rights, insurance with respect to survey matters will be provided at the discretion of Attorney's Title Guaranty Fund, Inc. (ATGTF);
- When, after the first disbursement, a further site search reveals a subsequently existing encumbrance over which ATGTF is unwilling to insure, Escrowee will notify Lender and may discontinue disbursements until the encumbrance has been removed or the satisfaction of debt is obtained. Escrowee shall not be liable for any disbursements made prior to the date of such notification.

4. **Method of Disbursement.** All disbursements for construction projects will be made by Escrowee directly to contractors, subcontractors, and materialmen listed and for the amounts shown on the Owner's Sworn Statement and/or the General Contractor's Sworn Statement, unless General Contractor obtains a Letter of Direction. Disbursements to be received by the subcontractor or materialman conveying payment in full as to the disbursement in question. In the event that General Contractor

ATG Form 4024-WI
Page 1 of 5

Construction Loan Escrow Disbursement Agreement – Wisconsin
ATG Form 4024-WI
 (page 5 of 5)

Notice: It is hereby agreed between the parties to this Agreement that any notices related to this Agreement shall be submitted as follows:

To Owner:	To Escrower:
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____
Phone: _____	Phone: _____
Fax: _____	Fax: _____
E-mail: _____	E-mail: _____

To Lender:

Name: _____

Address: _____

City, State, Zip: _____

Phone: _____

Fax: _____

E-mail: _____

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Disbursement Endorsement (ALTA 33-06)
ATG Form 2129-06
 (Exhibit A to ATG Form 4024-WI)

ENDORSEMENT **ATTORNEY'S TITLE GUARANTEE FUND, INC.** EXHIBIT A

Policy No. _____ State Issued _____

DISBURSEMENT ENDORSEMENT (ALTA 33-06)

1. The date of coverage is extended to:

- The current disbursement in \$ _____
- The aggregate amount, including the current disbursement, recognized by ATG as disbursed by the Escrower in \$ _____

2. Schedule A is amended as follows:

3. Schedule B is amended as follows:

Part I

Part II

ATG hereby insures the Escrower against loss or damage by reason of lack of priority of the lien of the insured mortgage on any lot, or right in a lot, insured by law for the cost of services, labor, or material furnished for improvement on the lot and prior to the above effective date of this endorsement.

This endorsement is made a part of the policy and is subject to all terms and provisions thereof and all other endorsements thereto. Except to the extent explicitly stated, it neither modifies, amends, or supplements any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Date: _____ "Mileage" \$____ Signature of Member or Authorized Agent: _____

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Required Documents and Procedures

- **General Contractor's Sworn Statement (ATG Form 3018-B or 3018-C)**
 - In order to disburse funds, it will be necessary to have an organized list of work to be performed and the names of the contractors and subcontractors who will be performing that work and/or supplying materials and expecting payment. This is also a list of persons who will need to supply lien waivers.

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Required Documents and Procedures

- **General Contractor's Sworn Statement (ATG Form 3018-B or 3018-C)**

- ATG Forms 3018-B and 3018-C can be used for this purpose but other forms will be considered so long as they provide the following:

- A sworn statement from the general contractor that it is a true and correct list of all those subcontractors and suppliers who will be involved in the project (and from whom lien waivers will be required);

Required Documents and Procedures

- **General Contractor's Sworn Statement (ATG Form 3018-B or 3018-C)**

- ATG Forms 3018-B and 3018-C can be used for this purpose but other forms will be considered so long as they provide the following:

- Appropriate spaces for the escrowee to post disbursements to the various contractors in order to keep track of funds disbursed.

General Contractor's Sworn Statement ATG Form 3018-B (page 1 of 4)

ATG LEGAL EDUCATION
ATTORNEYS TITLE GUARANTEE FUND, INC.
GENERAL CONTRACTOR'S SWORN STATEMENT

Owner No: _____

STATE OF _____)
COUNTY OF _____) MS

THE UNDERSIGNED, being duly sworn, on oath depose and say that he/she is the _____
of _____, the contractor employed for labor, labor and materials for the
of _____ work on the following (the Plaintiff) located at

_____ Address of Project _____

and of which _____
is the owner. That the persons, firms
and corporations whose names have been set forth on this Sworn Statement are all of the persons, firms, and corporations used by the
undersigned to furnish services, equipment, labor, and/or materials in the execution or support of the improvements on the Premises
that the affiant asserts are ongoing such project. Firm, or corporation in this Sworn Statement is the exact and total amount due as to
the amount of such work and project. Firm, or corporation in support of labor, services, equipment, and/or materials furnished and/or
subcontractors of the undersigned or any of the persons, firms, or corporations named in this Sworn Statement, has been fully accepted
by the owner and completed according to the plans and specifications.

The undersigned further states that all material (except as disclosed herein) has been or will be furnished from his/her own stock
and has applied to fill that there are no other contracts or agreements for such work remaining, and that there is nothing due or
owed due to any person for services, equipment, material, labor, or any other work done in connection with such work other than
that stated on this Sworn Statement. There are no other contracts, agreements, or conditional payment claims or contracts, or any other
agreements due or to be made concerning the site (including, but not limited to, conditional payment claims or contracts, or any other
agreements) and proceeds or payments in arrears. All bonds are true, correct, and genuine, and are delivered accordingly.
There is no claim, other right or liability, to either the validity of such bonds.

Signed this _____ day of _____, 20____

Name: _____
Title: _____

Subscribed and sworn before me this _____ day of _____, 20____

Notary Public _____

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Required Documents and Procedures

Owner's Payment Authorization (ATG Form 4114-WI)

- Do not disburse unless and until any differences are reconciled.
 - When there is disagreement on this subject (or on any other subject) it is always prudent to call the lender to advise them of the problem. It is the lender's funds we are holding and it is always a good idea to keep them in the loop and to have them intervene if necessary.

Owner's Payment Authorization ATG Form 4114-WI

SAMPLE ATTORNEY TITLE GUARANTEE FUND, INC.
5042200 Item 5149-0104
Form 4114
Wisconsin, WI 53118-1104
2021-01-01
REV. 10-2019

OWNER'S PAYMENT AUTHORIZATION

To: Attorney Title Guaranty Fund, Inc.
ATTN: _____

From: _____

Expense No.: _____

Project Name: _____
Address: _____

The undersigned hereby authorizes and directs _____ at Excesses, to disburse the rate of _____ as requested on the Grant of Contractor's Surety Statement, dated _____ in accordance with the above approved security project.

The undersigned also authorizes and directs _____ at Excesses, to disburse the rate of _____ as requested on the Owner's Surety Statement, dated _____ in accordance with the above approved security project.

Signature of Owner: _____
Date: _____

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Required Documents and Procedures

Lien Waivers

- These are the documents by which contractors and subcontractors agree to waive the rights they have (under Wisconsin Statutes Chapter 779) to file construction liens against the real estate we are insuring.
- Waivers must be collected from all parties disclosed on the Draw Request.
- They must be originals (i.e., not faxed) and must contain the project owner's name, address of the project, the type of work performed or material supplied.

Required Documents and Procedures

▪ Requirement and Exception to be Added to Commitment

– Construction Mortgage Requirement (Schedule B-I)

▪ *NOTE: If the terms of the loan permit the borrower to use any of the loan funds for construction, the mortgage must recite on its first page that it is a construction mortgage pursuant to Wis. Stats. Sec. 707.11 (1m).*

– This language is also available in REsource.

CONSTRUCTION LOAN ESCROW DISBURSEMENT AGREEMENT – WISCONSIN

Commitment/Policy No.: _____

1. This agreement sets forth the instructions from Lender and Owner to Escrowee for the disbursement of construction loan and owner equity funds for the construction of improvements on the property described in the above-referenced title insurance commitment or policy (the "Project"). The Lender will, from time to time, deposit a total of \$ _____ (the "Loan Funds") with _____ ("Escrowee"). Owner or Lender may deliver to Escrowee funds of the Owner, which represent the Owner's equity contribution to the improvements, including the cost of additions the Project or cost overruns. The General Contractor is to be _____, and the Inspector is to be _____.
2. Escrowee is authorized and directed to disburse the funds deposited hereunder in the following manner:
 - a. pay costs of construction of an improvement (the "Improvement") to be erected on the Premises;
 - b. obtain releases and satisfaction of liens and other encumbrances, if any, pursuant to statements of amounts due, which must be approved by Owner and Lender; and
 - c. pay such other amounts as are approved by Owner and Lender.
3. **Draws.** There will be _____ disbursements (the "Draw") during the Construction, which are to be made in accordance with the terms, conditions, and provisions of this Agreement. If not previously invoiced, each Draw shall include a fee of \$ _____, payable to Escrowee. All disbursements for the Construction will be made directly to the General Contractor and/or subcontractors, as designated by General Contractor. Additional Draws are \$ _____ per disbursement.

First Draw. Prior to the first Draw of the funds, Escrowee shall be furnished with the following required documents:

 - a. A General Contractor's Sworn Statement (ATG Form 3018-B), setting forth in detail the name, addresses, and telephone numbers of all contractors with whom it has contracted, type of labor and materials to be furnished, amounts of the contracts (including extras and credits), amounts previously paid to date, amounts of current request, accumulative retainages to date, and balances due;
 - b. If applicable, Owner shall furnish Lender and Escrowee an Owner's Sworn Statement (ATG Form 3018-A), disclosing the various contracts entered into by Owner relating to the Construction. Owner will also provide names of the contractors, their addresses, kind of services, work, or material to be furnished, and the amounts to be paid pursuant to this Agreement.
 - c. Owner shall furnish, or cause to be furnished, to Escrowee W-9 forms from all persons or entities to be paid by Escrowee under this Agreement (including General Contractor, subcontractors, and suppliers). All W-9s must be submitted prior to disbursement of funds.
4. Owner and Lender understand and agree that the parties listed on Draw Requests, Owner's Sworn Statement, or General Contractor's Sworn Statement may not include all parties supplying labor, services, and/or materials to the Project. Escrowee is not responsible to review any lien waiver from any party not listed on a Draw Request, Owner's Sworn Statement, or General Contractor's Sworn Statement. Furthermore, notwithstanding the foregoing, Escrowee is only required to collect such lien waivers as needed to provide the title insurance coverage to the Lender specified by this Agreement. Owner and Lender acknowledge that any party supplying labor, services, and/or materials to the Project who is not paid in full may have lien rights against the Property.
5. **Survey.** In order to obtain insurance with respect to survey matters, Owner or Lender shall furnish to Escrowee a current ALTA survey. It is understood that the initial survey will depict the foundation of the proposed Improvements and that an "as-built" survey will be furnished once the Improvements have been completed. Upon examination and review of the initial "foundation" survey and subsequent updates, insurance with respect to survey matters will be provided at the discretion of Attorneys' Title Guaranty Fund, Inc. (ATG®).
6. Where, after the first disbursement, a further title search reveals a subsequently arising exception over which ATG is unwilling to insure, Escrowee will notify Lender and may discontinue disbursement until the exception has been disposed of to the satisfaction of Lender and ATG. A construction lien claim over which ATG is required to insure hereunder does not warrant a discontinuance of disbursements.
7. **Method of Disbursement.** All disbursements for construction purposes will be made by Escrowee directly to contractors, subcontractors, and materialmen listed and for the amounts shown on the Owner's Sworn Statement and/or the General Contractor's Sworn Statement, unless General Contractor submits a Letter of Direction – Authorization to Pay, executed by the subcontractor or materialman certifying payment in full as to the disbursement in question. In the event that General Contractor

and any subcontractor jointly authorize, in writing, Escrowee to pay any funds due one to the other, Escrowee may, but is not obligated to, comply with such authorization.

8. With respect to the condition of title, the liability of Escrowee in making any disbursements in reliance upon the title evidence referred to above shall not extend to the determination of whether or not it is acceptable to Lender, the furnishing of funds for disbursement by the Lender being considered the acceptance of title as so reported.
9. If at any time during the course of construction, the total of the unpaid disclosed cost of construction of the Improvement, as indicated by the sum of the column totals on the Owner's Sworn Statement and the General Contractor's Sworn Statement, exceeds the amount of the undisbursed mortgage proceeds, as calculated by subtracting the total amount of liability of ATG shown on the Construction Loan Disbursement Endorsements from the face amount of the mortgage, Escrowee need not make further disbursements under the terms of this escrow until Owner has deposited in this escrow the sum necessary to make the available funds equal to the unpaid disclosed cost of construction, or unless specifically directed to do so by Lender. Also, if Escrowee discovers a misstatement in a Sworn Statement furnished by General Contractor or Owner, it shall:
 - a. stop disbursements until the misstatement has been corrected; and
 - b. inform Lender prior to making a further disbursement even though the same has been corrected.
10. **Disbursements.** Prior to each disbursement of Loan Funds hereunder, Owner, Lender, and General Contractor will furnish Escrowee:
 - a. An updated General Contractor's Sworn Statement and a General Contractor's Draw Request.
 - b. If applicable, an updated Owner's Sworn Statement and an Owner's Draw Request. The Owner's Draw Request and General Contractor's Draw Request are collectively defined as "Draw Request."
 - c. A report of the Inspector or a certification by the architect certifying that work has been completed and materials are in place as indicated by the request for payment of the General Contractor.
 - d. Written approval by Owner of the payment by Escrowee for the current Draw ("Owner's Payment Authorization") (ATG Form 4114) (if Owner is an entity, written approval by its authorized agent (Escrowee may rely upon the signature on the approval as having been made by an authorized agent)). In the event that there is more than one Owner, the written approval by one Owner shall bind all Owners.
 - e. An approval by the Lender of the current Draw, which approval shall be deemed to have been given by the delivery to Escrowee of funds in the amount of the Draw, and for payment of any unpaid title premiums or Escrow Fee.
 - f. Sufficient funds to cover unpaid title and escrow charges.
 - g. Waivers of construction lien rights, in a form acceptable to Escrowee, which waivers are executed by all parties listed on the Draw Request for the current Draws, which waivers are partial as to all parties not yet paid in full, and in full as to all parties to be paid in full with the current Draw.
11. **Endorsement to Policy.** As Escrowee makes a partial disbursement of mortgage proceeds hereunder, it will furnish Lender an ATG Disbursement Endorsement (ALTA 33-06) to the ALTA Loan Policy, in the form attached as Exhibit A, covering such requested disbursement.
12. **Project Cost Increases.** If the Escrowee determines, or the Lender notifies Escrowee, that the undisbursed portion of the loan will not be sufficient to complete and pay for the construction of the Project, Owner shall deliver to Escrowee the sum necessary. If a Draw Request has been presented to Escrowee but not disbursed when the Escrowee is notified of the shortage of funds, Escrowee shall delay disbursement until the funds are received from the Owner.
13. **No Interest on Escrowed Funds.** All parties acknowledge that no interest will be paid on any Loan Funds while held by Escrowee pursuant to this Agreement and that, in addition to the fees payable to Escrowee for its services, Escrowee may receive ancillary benefits from the use of the Loan Funds while held in escrow.
14. **Final Draw.** Prior to the final Draw of the funds, Escrowee shall be furnished with a Final Waiver of Lien and Contractor's Affidavit (ATG Form 3005) from the General Contractor.
15. **Billing.** Bill all title, recording, escrow charges, and transfer taxes to Owner and collect the same from the funds deposited by Lender pursuant to this Agreement. All such title, recording, escrow charges, and transfer taxes are to be considered as a cost of construction of the Improvement for purposes of paragraph 9 of this Agreement.
16. **No Owner Lien Coverage Granted.** The only responsibility of Escrowee 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 Escrowee to provide Owner with any protection against construction lien claims, either under this Agreement or in a title insurance policy.

17. **Escrow Termination; Resignation of Escrowee.** This escrow shall terminate, and Escrowee shall have no further liability hereunder, in any of the following events:

- a. if ATG does not issue the title insurance policy to Lender; or
- b. If a subsequent title search reveals a matter for which Lender requires an assurance that ATG is unwilling to provide.

Escrowee shall also have the right to resign as escrowee upon written notice to Owner and Lender. If the escrow terminates or if Escrowee resigns, Escrowee may return all deposits to the depositor.

18. **Liability of Escrowee and ATG.** The functions and duties assumed by Escrowee include only those described in this Agreement and the liability of ATG is limited to the terms, conditions, and exceptions contained in the ALTA Loan Policy. Escrowee is not obligated to act except in accordance with the terms and conditions of this Agreement. Escrowee does not insure:

- a. that the Improvement will be completed;
- b. that the Improvement, when completed, will be in accordance with plans and specifications;
- c. that sufficient funds will be available for completion; or
- d. the accuracy of the certificates of the Inspector other than the procurement of the certificate as one the of the conditions precedent to each disbursement. ATG and Escrowee assume no liability to Owner relating to protection against construction lien claims.

19. **Hold Harmless.** The parties acknowledge that Escrowee is acting at the request of and for the accommodation of the parties, and hereby release and hold Escrowee harmless from liability for any acts performed in good faith, in relation to the funds, and the disbursement thereof. The parties agree that any action in relation to an alleged breach of this Agreement by Escrowee shall be commenced within two years of the date of the breach, without regard to the date the breach is discovered. Any action not brought against Escrowee within that two-year time period shall be barred, without regard to any other limitations period set forth by law or statute, and Lender and Owner hereby waive any statute of limitations to the contrary.

20. **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 Escrowee, Lender, and Owner, as a third party beneficiary or otherwise under any theory of law.

21. **General Conditions.** At any time prior to its commencement of disbursement of funds hereunder, Escrowee reserves the right to decline commencement of disbursement of funds if ATG declines to insure any risk offered for insurance hereunder, whereupon Escrowee shall return to Lender any documents in its possession relating to such loan and the funds received by it. Commencement of disbursement of funds makes this Agreement effective as to all funds received and disbursed for the construction of the Improvement.

- a. **Compensation of Escrowee.** Escrowee shall be compensated for its services rendered under this Agreement at the time of, and from the funds deposited for, each disbursement. In addition, Escrowee shall be paid for investment or reinvestment of funds (if directed jointly by Owner and Lender) and for any other special services that may be rendered by it, in accordance with invoices rendered by Escrowee from time to time. All fees and title charges due Escrowee and title charges, search fees, recording fees, transfer taxes, and the like due to ATG, and any other costs and/or fees advanced by Escrowee on behalf of any party to this Agreement shall be paid to Escrowee prior to or contemporaneously with issuance of each Construction Loan Disbursement Endorsement to the ALTA Loan Policy.
- b. **Binding Effect.** This Agreement may be executed in multiple original counterparts, duly executed by Beneficiary, Trustee, Lender, and Contractor, provided, however, this Agreement shall not become binding upon Escrowee until it has received manually executed original copies of the same from each of the foregoing named parties and Escrowee has accepted the same and delivered copies of said executed Agreement to each of said parties.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. If there be more than one person designated herein, the verbs and pronouns associated therewith, although expressed in the singular, shall be read and construed as plural. Whenever the masculine gender is used herein it shall also be read and construed as the feminine, and vice-versa, as the case may be.
- d. It is mutually agreed and understood by and between the parties hereto that the agreements herein contained shall extend to and be obligatory and binding upon the heirs, executors, administrators, successors, and assigns of the respective parties hereto.
- e. In the event that any provision of this Agreement, or part thereof, shall be held to be void or unenforceable by a final, non-appealable order entered by a court of competent jurisdiction, such determination shall not affect or impair the enforceability of the remaining portions of this Agreement.
- f. Each party hereto represents and warrants to the other parties hereto that it has full power and authority to execute this Agreement and to perform or cause to be performed the obligations on its part to be performed.

- g. In the computation of a period of time, if any, expressed in this Agreement, the day of the act or event from which said period of time runs shall be excluded and the last day of such period shall be included, unless it falls on a Saturday, Sunday, or legal holiday observed by the office of the Recorder of Deeds of the county in which the Premises is located, in which case the period shall be deemed to run until the end of the next day, which is not a Saturday, Sunday, or such legal holiday.
- h. This Agreement constitutes the entire agreement of the parties hereto and supersedes any prior or contemporaneous agreements, representations, or understandings, whether written or oral. This Agreement may be amended only by written instrument executed by each of the parties hereto.
- i. The captions contained in this Agreement are for convenience only and are not part of the terms, provisions, or conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed as of the

_____ day of _____, _____.
 Day Month Year

OWNER

OWNER

 Signature

 Signature

 Name (Print)

 Name (Print)

LENDER

ESCROW AGENT

 Name of Lender (Print)

 Name of Escrow Agent (Print)

By _____
 Signature

By _____
 Signature

 Name (Print)

 Name (Print), Its Authorize Representative

 Title

The undersigned General Contractor acknowledges receipt of a copy of this Agreement and agrees that:

- a. there are no rights or remedies that inure the benefit of the General Contractor under Agreement, whether under a third party beneficiary theory or otherwise; and
- b. The Construction referred to in this Agreement will be constructed an completed in strict accordance with plans and specifications and the building contract, free and clear of any liens or claims of subcontractors, laborers, and/or materialmen.

GENERAL CONTRACTOR

By _____
 Signature

 Name (Print)

 Title

Phone: _____

Fax: _____

E-mail: _____

FEIN: _____

Notices. It is hereby agreed between the parties to this Agreement that any notices related to this Agreement shall be submitted as follows:

To Owner:

Name: _____
Address: _____
City, State, Zip: _____
Phone: _____
Fax: _____
E-mail: _____

To Escrowee:

Name: _____
Address: _____
City, State, Zip: _____
Phone: _____
Fax: _____
E-mail: _____

To Lender:

Attn: _____

Address: _____
City, State, Zip: _____
Phone: _____
Fax: _____
E-mail: _____

ENDORSEMENT

EXHIBIT A

 **ATTORNEYS' TITLE GUARANTY FUND, INC.**

Policy No.:

State Issued:

DISBURSEMENT ENDORSEMENT (ALTA 33-06)

1. The Date of Coverage is amended to _____.
 - a. The current disbursement is: \$ _____
 - b. The aggregate amount, including the current disbursement, recognized by ATG as disbursed by the Insured is: \$ _____
2. Schedule A is amended as follows:

3. Schedule B is amended as follows:

Part I

Part II

ATG hereby insures the Insured against loss or damage by reason of lack of priority of the lien of the insured mortgage or any lien, or right to a lien, imposed by law for the cost of services, labor, or material furnished for Improvement on the Land prior to the above effective date of this endorsement.

This endorsement is made a part of the policy and is subject to all terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Date

Member No.

Signature of Member or Authorized Signatory

GENERAL CONTRACTOR'S SWORN STATEMENT

Escrow No.: _____

STATE OF _____ }
COUNTY OF _____ } SS

THE UNDERSIGNED, being duly sworn, on oath deposes and says that he/she is the _____ Title

of _____, the contractor employed to furnish labor and materials for the
General Contractor

_____ work on the building(s) (the Premises) located at
Description of Work

_____,
Address of Premises

and of which _____ is the owner. That the persons, firms
Owner

and corporations whose names have been set forth on this Sworn Statement are all of the persons, firms, and corporations hired by the undersigned to furnish services, equipment, labor, and/or materials in the construction or repair of the improvements on the Premises; that the dollar amount set opposite each person, firm, or corporation in this Sworn Statement is the exact and total amount due or to become due to each such person, firm, or corporation on account of labor, services, equipment, and/or materials furnished with respect to said Premises; that as of this date, all work to be performed with respect to said Premises by the undersigned or any suppliers or subcontractors of the undersigned or any of the persons, firms, or corporations named in this Sworn Statement, has been fully accepted by the owner and completed according to the plans and specifications.

The undersigned further states that all material (except as disclosed herein) has been or will be furnished from his/her own stock and has been paid for in full; that there are no other contracts or subcontracts for said work outstanding, and that there is nothing due or to become due to any person for services, equipment, material, labor, or any other work done in connection with said work other than that stated on said Sworn Statement. There are no chattel mortgages, personal property leases, conditional sale contracts, or any other agreements given or are now outstanding as to any fixtures, equipment, appliances, or material placed upon or installed in or upon the aforementioned Premises or improvements thereon. All waivers are true, correct, and genuine, and are delivered unconditionally. Furthermore, there is no claim, either legal or equitable, to defeat the validity of said waivers.

Signed this _____ day of _____, _____
Day Month Year

Name: _____
(Individual/Corporation/Partnership)

By: _____

Title

Subscribed and sworn before me this _____ day of _____, _____
Day Month Year

Notary Public

GENERAL CONTRACTOR'S SWORN STATEMENT

Name, Address, and Telephone Number	Type of Labor and Materials to be Furnished	Amount of Contract (including extras and credits)	Amount Previously Paid to Date	Amount of Current Request	Accumulative Retainage to Date	Balance Due
	Permit					
	Excavation					
	Concrete					
	Demolition					
	Masonry					
	Drywall					
	Carpentry					
	Rough Lumber					
	Finish Lumber					
	Insulation					
	Roofing					
	Gutters					
	Plumbing					
	Water and Sewer					
	Structural Steel					
	HVAC					

GENERAL CONTRACTOR'S SWORN STATEMENT

Name, Address, and Telephone Number	Type of Labor and Materials to be Furnished	Amount of Contract (including extras and credits)	Amount Previously Paid to Date	Amount of Current Request	Accumulative Retainage to Date	Balance Due
	Electrical					
	Doors and Windows					
	Paining					
	Cabinets/ Countertops					
	Flooring					
	Appliances					
	Driveway/ Paving					
	Central Vacuum					
	Garage Doors					
	Final Grade					
	Landscaping					
	Light Fixtures					
	Security System					
	Sprinkler System					
	Stairs					

ATTORNEYS' TITLE GUARANTY FUND, INC.

GENERAL CONTRACTOR'S SWORN STATEMENT
(No Pre-Itemization)

Escrow No.: _____

STATE OF _____
COUNTY OF _____ } SS

THE UNDERSIGNED, being duly sworn, on oath deposes and says that he/she is the _____ Title

of _____, the contractor employed to furnish labor and materials for the
General Contractor

_____ work on the building(s) (the Premises) located at
Description of Work

_____ Address of Premises

and of which _____ is the owner. That the persons, firms
Owner

and corporations whose names have been set forth on this Sworn Statement are all of the persons, firms, and corporations hired by the undersigned to furnish services, equipment, labor, and/or materials in the construction or repair of the improvements on the Premises; that the dollar amount set opposite each person, firm, or corporation in this Sworn Statement is the exact and total amount due or to become due to each such person, firm, or corporation on account of labor, services, equipment, and/or materials furnished with respect to said Premises; that as of this date, all work to be performed with respect to said Premises by the undersigned or any suppliers or subcontractors of the undersigned or any of the persons, firms, or corporations named in this Sworn Statement, has been fully accepted by the owner and completed according to the plans and specifications.

The undersigned further states that all material (except as disclosed herein) has been or will be furnished from his/her own stock and has been paid for in full; that there are no other contracts or subcontracts for said work outstanding, and that there is nothing due or to become due to any person for services, equipment, material, labor, or any other work done in connection with said work other than that stated on said Sworn Statement. There are no chattel mortgages, personal property leases, conditional sale contracts, or any other agreements given or are now outstanding as to any fixtures, equipment, appliances, or material placed upon or installed in or upon the aforementioned Premises or improvements thereon. All waivers are true, correct, and genuine, and are delivered unconditionally. Furthermore, there is no claim, either legal or equitable, to defeat the validity of said waivers.

Signed this _____ day of _____, _____
Day Month Year

Name: _____
(Individual/Corporation/Partnership)

By: _____
Title

Subscribed and sworn before me this _____ day of _____, _____
Day Month Year

Notary Public

 ATTORNEYS' TITLE GUARANTY FUND, INC.

N14W23800 Stone Ridge Drive
Suite 120
Waukesha, WI 53188-1144
262.347.0102
Fax: 262.347.0110

OWNER'S PAYMENT AUTHORIZATION

To: Attorneys' Title Guaranty Fund, Inc.
ATTN: _____

From: _____

Escrow No.: _____

Project Name: _____

Address: _____

The undersigned hereby authorizes and directs _____, as Escrowee, to disburse the sum of \$ _____, as requested on the General Contractor's Sworn Statement, dated _____, in accordance with the above captioned escrow project.

The undersigned also authorizes and directs _____, as Escrowee, to disburse the sum of \$ _____, as requested on the Owner's Sworn Statement, dated _____, in accordance with the above captioned escrow project.

Signature of Owner

Date

WAIVER OF LIEN TO DATE AND CONTRACTOR'S AFFIDAVIT

STATE OF _____
 COUNTY OF _____

Escrow No.: _____

THE UNDERSIGNED, being duly sworn, deposes and says that he/she is _____
 of _____, and has been employed by _____
 to furnish _____ for the building located at _____,
 for which _____ is the owner. That the total amount of the contract, including extras, is
 \$ _____, on which he has received payment of \$ _____ prior to this payment. That all waivers are
 true, correct, and genuine and delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said
 waivers. That the following are the names of all parties who have furnished material or labor, or both for said work and all parties
 having contracts or sub contract(s) for specific portions of said work or for material entering into construction thereof and the amount
 due or become due to each, and that the items mentioned include all labor and material required to complete said work according to
 plans and specifications:

Name	What For	Contract Price	Amount Paid	This Payment	Balance Due

That there are no other contracts for said work outstanding, and there is nothing due or to become due to any person for material,
 labor, or other work of any kind done or to be done upon or in connection with said work other than above stated.

THE UNDERSIGNED, for and in consideration of \$ _____, and other good and valuable consideration, the
 the receipt whereof is hereby acknowledged, do(es) hereby waive and release any and all lien or claim of, or right to, lien, under the
 statutes of the state in which the premises is located, relating to mechanic's liens with respect to and on said above described premises,
 and the improvement thereon, and on the material, fixtures, apparatus, or machinery furnished and on the monies, funds, or other
 considerations due or to become due from the Owner on account of labor, services, material, fixtures, apparatus, or machinery
 furnished to this date by the undersigned for the above described premises, including extras as heretofore described.

**NOTE: All waivers must be for the full amount paid. If waiver is for a corporation, the corporate name should be used and the
 title of the officer signing waiver should be set forth. If waiver is for a partnership, the partnership name should be used, a
 partner should sign, and designate himself as "Partner."**

Signed this _____ day of _____, _____
Day Month Year

Subscribed and sworn to before me this _____ day of _____, _____
Day Month Year

 Signature

 Notary Public

FINAL WAIVER OF LIEN AND CONTRACTOR'S AFFIDAVIT

STATE OF _____
 COUNTY OF _____

Escrow No.: _____

THE UNDERSIGNED, being duly sworn, deposes and says that he/she is _____ of _____, and has been employed by _____ to furnish _____ for the building located at _____, for which _____ is the owner. That the total amount of the contract, including extras, is \$ _____, on which he has received payment of \$ _____ prior to this payment. That all waivers are true, correct, and genuine and delivered unconditionally and that there is no claim, either legal or equitable, to defeat the validity of said waivers. That the following are the names of all parties who have furnished material or labor, or both, for said work and all parties having contracts or sub contract(s) for specific portions of said work or for material entering into construction thereof and the amount due or become due to each, and that the items mentioned include all labor and material required to complete said work according to plans and specifications:

Name	What For	Contract Price	Amount Paid	This Payment	Balance Due

That there are no other contracts for said work outstanding, and there is nothing due or to become due to any person for material, labor, or other work of any kind done or to be done upon or in connection with said work other than above stated.

THE UNDERSIGNED, for and in consideration of \$ _____, and other good and valuable consideration, the receipt whereof is hereby acknowledged, do(es) hereby waive and release any and all lien or claim of, or right to, lien, under the statutes of the state in which the premises is located, relating to mechanics' or construction liens with respect to and on said above described premises, and the improvement thereon, and on the material, fixtures, apparatus, or machinery furnished and on the monies, funds, or other considerations due or to become due from the Owner on account of labor, services, material, fixtures, apparatus, or machinery heretofore furnished or which may be furnished at any time hereafter by the undersigned for the above described premises, including extras, as heretofore described.

NOTE: All waivers must be for the full amount paid. If waiver is for a corporation, the corporate name should be used and the title of the officer signing waiver should be set forth. If waiver is for a partnership, the partnership name should be used, a partner should sign, and designate himself as "Partner."

Signed this _____ day of _____, _____
Day Month Year

Subscribed and sworn to before me this _____ day of _____, _____
Day Month Year

 Signature

 Notary Public