



# Fidelity National Title®

## ESCROW AGREEMENT (Earnest Money)

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (hereinafter referred to as “Buyer”), \_\_\_\_\_ (hereinafter referred to as “Seller”), and Fidelity National Title Insurance Company, its successors and assigns, (hereinafter referred to as the “Company”);

WHEREAS, Buyer and Seller have entered into an agreement (hereinafter referred to as the “Purchase Agreement”) to transfer ownership of certain real estate more particularly described in described in the Company’s Commitment No. \_\_\_\_\_ (hereinafter referred to as the “Land”); and

WHEREAS, pursuant to the terms of the Purchase Agreement the Buyer has agreed to tender certain earnest monies in the amount of \$ \_\_\_\_\_ (hereinafter referred to as the “Earnest Monies”) to the Company to be held in escrow by the Company pending the closing of the transaction; and

WHEREAS, the Company has agreed to hold the Earnest Monies only if satisfactorily protected as provided herein.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration hereby acknowledged, the parties hereto mutually agree and covenant:

1. The Company shall receive the Earnest Monies from the Buyer as provided under the Purchase Agreement and deposit the Earnest Monies into an interest-bearing account with a federally insured institution of the Company’s choice, **PROVIDED**, the Company shall not be required to deposit the Earnest Monies into such interest-bearing account until such time as the Company has received a completed IRS Form W-9 from the Buyer.
2. The duties and liability of the Company shall be as follows:
  - a) The duties of the Company shall be as specifically described herein or as necessary to carry out the contract and are purely ministerial in nature.
  - b) The Company shall incur liability only for willful misconduct or gross negligence.
  - c) The Company shall have no liability for loss of principal and interest resulting from the actions and investment decisions of the federally insured institution with whom the Earnest Monies are deposited.
  - d) The Company shall be fully protected and authorized to act in following the instructions of the Buyer and Seller.
  - e) In the Company’s discretion, instructions of the Buyer and Seller may be required to be in writing, though any instructions conveyed by telecopier will be as if in original form.

- f) The Company shall have no responsibility for the genuineness or validity of any document or notice received by the Company and believed by the Company to be duly executed by the appropriate parties.
  - g) The Company shall have no responsibility to Buyer or Seller or any other person for the accuracy of any representation, warranty or other statement in the sales contract or otherwise contained in related agreements, or for any condition except as it may be specifically advised in writing in strict compliance with the provisions contained herein.
  - h) The Company may in its discretion consult with counsel and shall be fully protected in any action taken in good faith pursuant to the advice of counsel.
  - i) The Company may in its discretion institute legal action of any kind and may interplead the Earnest Monies with the Court to resolve a controversy pertaining to this Agreement or the circumstances relative thereto and in so doing shall be protected and indemnified as provided below.
3. The Company shall receive a service charge of \$ \_\_\_\_\_ [The Company may waive this fee if it receives a premium for issuing one or more title insurance policies insuring the title to the Land].
  4. This Agreement shall be terminated and liability of the Company shall cease upon the distribution of the Earnest Monies, or by written notice of such termination by the Seller and Buyer to the Company.
  5. Seller and Buyer jointly and severally agree to hold harmless and indemnify the Company for all its expenses, costs and reasonable attorney's fees incurred under this Agreement and the transactions relative thereto unless resulting from the willful misconduct or gross negligence of the Company.
  6. The parties to this escrow acknowledge that the maintenance of this escrow account with some depository institutions may result in the Company being provided with an array of bank services, accommodations or other benefits by the depository institution. The Company or its affiliates also may elect to enter into other business transactions with or obtain loans for investment or other purposes from the depository institution. All such services, accommodations and other benefits shall accrue to the Company and the Company shall have no obligation to account to the parties to the escrow for the value of such services, accommodations or other benefits.
  7. All terms and conditions of this Agreement shall be binding upon the respective heirs, successors, and assigns of the parties.

8. Contradictions between this Agreement and the sales contract shall be resolved in favor this Agreement.
9. Written communications and notices required under this Agreement shall be provided at the addresses given below.
10. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

**If to the Buyer:**

**If to the Seller:**

**If to the Company:**

Fidelity National Title Insurance Company  
Attn: Ken Stone and Susan Veazey  
150 Fayetteville St., Suite 1140  
Raleigh, NC 27601  
Tel: 919-861-6999; Fax: 919-828-2885

**SELLER:**

\_\_\_\_\_  
[Name of Company]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BUYER:**

\_\_\_\_\_  
[Name of Company]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE COMPANY:**

**Fidelity National Title Insurance Company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_