

ESCROW AGREEMENT

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Property: _____

Seller: _____

Buyer: _____

Construction and Sale Contract ("Contract")

Dated: _____

It is hereby agreed by the Seller and Buyer and their respective counsel that the Seller's Attorney, _____, ("Escrow Agent") shall hold the following total escrow sum in escrow in its attorney trust account without interest, pending completion of the following items, all of which shall be completed no later than the date indicated below:

<u>Item to be Completed</u>	<u>Deadline for Completion</u>	<u>Escrow Therefor</u>
1.		
2.		
3.		
4.		
5.		

TOTAL ESCROW SUM: \$_____.

Upon completion of any item by Seller in accordance with the applicable plans and specifications and in accordance with the terms of (i) any express limited warranty delivered to Buyer by Seller pursuant to Paragraph 25 of the Contract or (ii) New York General Business Law Section 777-a if Paragraph 25(c) of the Contract applies, Seller shall notify Escrow Agent, Buyer's attorney, and Buyer in writing thereof. Buyer shall, within seven (7) calendar days after receipt of written notice from Seller, deliver Buyer's written approval or disapproval of the completed work to Escrow Agent. Buyer's written approval shall not be unreasonably withheld, conditioned or delayed. If approved, Escrow Agent shall promptly remit the escrowed sum to Seller. If disapproved, Buyer and Seller must then deliver to Escrow Agent either (i) a statement

signed by Buyer and Seller directing Escrow Agent to pay over the escrowed sum as specified therein; or (ii) a final judgment, order, decree or award instructing Escrow Agent as to the manner and to whom the escrowed sum should be paid, and the lapse of any time for the taking of an appeal or petition, in which event, Escrow Agent shall pay over the escrowed sum in the manner and to the person or party required by such final judgment, order, decree or award.

If, however, Buyer shall not respond to Seller's notification that the work is complete within the time period specified above, Escrow Agent is hereby authorized to disburse the escrowed sum to Seller upon five (5) calendar days' written notice to Buyer and Buyer's Attorney.

Notwithstanding anything to the contrary contained herein, if Seller shall fail to complete any of the above items by the applicable date indicated therefor above, Escrow Agent is hereby authorized, upon fifteen (15) days written notice to Seller and Seller's failure to object in writing within said fifteen (15) days, to disburse to Buyer only that portion of the escrowed sum attributable to that incomplete item on the above list, and any remaining portion of the escrowed sum shall be continued to be held in escrow pursuant to the terms of this Escrow Agreement.

In the event Seller shall be delayed or hindered in or prevented from completion of the above items by any cause beyond the reasonable control of Seller, including but not limited to, Buyer's acts or omissions, acts of God, inclement weather, labor or materials issues, or governmental laws, regulations or orders, then the above deadline shall be extended for a period equivalent to the period of such delay. Buyer shall reasonably cooperate with Seller to effectuate the completion of the above items.

Upon payment of the escrowed sum by Escrow Agent pursuant to this Agreement, including without limitation, payment to a clerk of court as provided hereinafter, Escrow Agent shall be fully released and discharged of and from all obligations and liability imposed by this Agreement.

Buyer and Seller, jointly and severally, hereby agree to indemnify, defend and hold Escrow Agent harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which Escrow Agent may incur or with which it may be threatened by reason of its acting as Escrow Agent under this Agreement, and in connection therewith, to indemnify, defend and hold harmless Escrow Agent against any and all expenses, including attorney's fees and the cost of defending any action, suit or proceeding or resisting any claim.

If any controversy arises between the parties to this Agreement, or with any other party, concerning its terms, conditions, subject matter or the escrowed sum, Escrow Agent will not be required to determine any controversy or to take any action regarding it, and Escrow Agent may hold all documents and funds and may wait for settlement of any such controversy by final appropriate legal proceedings or other means as, in Escrow Agent's discretion, it may require, despite what may be set forth elsewhere in this Agreement. In such event, Escrow Agent will not be liable for interest or damages. Furthermore, Escrow Agent may at its option, file an action of interpleader requiring the parties to answer and litigate any claims and rights among themselves. Escrow Agent is authorized to deposit with the clerk of the court the escrowed sum and all documents and certificates related thereto, attributable to costs, expenses, charges and reasonable attorneys' fees incurred by it due to the interpleader action and which Buyer and Seller jointly and severally agree to pay. Upon initiating such action, Escrow Agent shall be fully

released and discharged of and from all obligations and liability imposed by the terms of this Agreement, and the action will be deemed to be solely a dispute between Buyer and Seller.

Escrow Agent may resign upon ten (10) calendar days written notice to the parties to this Agreement. If a successor escrow agent is not appointed within a seven (7) calendar day period following such resignation, Escrow Agent may petition a court of competent jurisdiction to name a successor.

Escrow Agent's duties hereunder shall be limited to the safe-keeping of the escrowed sum and the disposition of the same in accordance with the terms hereof. Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no implied duties or obligations shall be read into this Agreement against Escrow Agent.

Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized so to do.

All notices and communications hereunder shall be in writing and shall be deemed to be duly given if sent by registered or certified mail, return receipt requested, postage prepaid, or by nationally recognized overnight delivery service, to the following addresses:

Seller:

Seller's Attorney/
Escrow Agent

Buyer:

Buyer's Attorney:

This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

This Agreement shall be construed, enforced and interpreted under the laws of the State of New York, without regard to principles of conflict of laws.

This Agreement shall terminate and Escrow Agent shall be discharged of all responsibility hereunder at such time as Escrow Agent shall have completed its duties hereunder.

As used herein the plural shall include the singular, the singular the plural, and the use of any gender shall be applicable to all genders.

Time shall be of the essence for all purposes in construing and applying this Agreement.

The Buyer acknowledges that the Escrow Agent is the attorney representing the Seller in this transaction and waives any conflict of interest and agrees that the Escrow Agent may represent the Seller in this transaction and in any litigation, mediation, arbitration or any other dispute resolution proceeding between Seller and Buyer.

Agreed and accepted this ____ day of _____ 20 ____

Buyer's Attorney:

Buyer: _____

By: _____

Buyer: _____

Escrow Agent/Seller's Attorney:

Seller: _____

By: _____