

## Escrow Terms and Conditions

*These Escrow Agreement and Terms and Conditions ("Agreement") includes any Exhibits (A, B, C, D, E, F and G) any such amendments to this Agreement authorized by the Payer and Payee as parties to the Agreement and accepted by First National Bank Alaska ("Bank") whether these Exhibits and amendments are provided at inception or throughout the term of the Agreement.*

*Bank's duties are determined from this Agreement and Fee Schedules alone without reference to other agreements, including a deposited promissory note, regardless whether such other agreements differ from (as to parties or otherwise) or are more complete than this Agreement.*

**Interpretation of this Agreement.** This Agreement is interpreted strictly.

**Singular Includes Plural.** Wherever the context requires, the singular includes the plural.

**Effective Date.** The effective date hereof is the date of acceptance of the account, or the first installment due date, or the first interest due date, or the date that funds, if any, were paid (on the account) directly by Payer to Payee prior to acceptance, whichever is earliest. Funds received by the Bank prior to acceptance is deemed to be received on the date of acceptance. The Bank in its sole discretion will determine the effective date.

**Business Days.** Business days are defined as Monday through Friday, excluding holidays.

**Changes in Fee Schedule.** Future changes by Bank in its schedule of fees (basic and special) are applicable to fees that become due thereafter.

**Payment Arrangements.** The following information defines the payment arrangements offered.

- *Installment(s) including interest* – the installment amount indicated in the Agreement includes principal and interest.
- *Installment(s) plus interest* – installment amounts indicated in the agreement are principal payments; amount due will include the indicated installment amount and any accrued interest through the bill date.
- *Interest only* – installments paid are designated as interest only, generally with a payoff of principal and unpaid interest due at the end of the Agreement.
- *No balance arrangement* – installments are collection of lease payments, reserves, or rental agreements.

**Annual Fee.** An annual fee is due and earned when each full or partial account year begins. The first account year begins on the effective date hereof.

**Deduction for Fees.** Fees and other claims in connection with the account, due from Payer, may be deducted from funds received, leaving the balance for application to interest and principal, which may impact satisfaction of any installment due. Fees and other claims in connection with the account due Bank from Payee or Payer may be deducted from funds otherwise available for disbursement.

**Late Charges.** A late charge is based on failure to satisfy an installment or part of an installment (when an amount exceeds \$15.00) within the days indicated in the Agreement. If the Agreement specifies a date on which the entire amount of unpaid principal and interest is then due, there is no late charge for failure to pay the same, within any time period. There is only one late charge with respect to a particular installment. There is no interest on late charges, and late charges are in addition to interest.

**Uncollected Check.** The amount of an uncollected check or other item is applied without waiting for collection, but disbursement may be delayed up to 10 (Ten) business days. If a check or other item is not collected and disbursement has occurred, Bank may recover from Payer, Payee or a security Assignee.

**Set-off and Security Interest.** Fees and other claims in connection with the account, due Bank from Payer, Payee or security Assignee, may be set-off against any deposit account that the Payee or Payer has with the Bank. Also, to secure the payment of such fees and other claims due Bank from Payee, Payee grants to Bank a security interest in any promissory note deposited herewith.

**Payments directly to Payee.** Bank is not required to apply to balances funds paid by Payer directly to Payee. However, as to funds so paid prior to acceptance of the account and reported to Bank in writing by Payer and Payee prior to acceptance, the Bank will apply to balances.

**Adjustments of Balances.** Upon written request from Payer, Payee, and security Assignee, Bank may, in its discretion, adjust balances to reflect funds paid by Payer directly to Payee or Assignee, forgiveness of debt, or other transaction.

**Directions by Payer as to Application of Funds.** Funds received with directions to apply to interest and principal or allocate to installments in a manner inconsistent with the payment Agreement or to disburse in a manner inconsistent with the Agreement will not be applied and will be remitted to the person who paid it.

**Satisfaction of installments.** Regular and irregular installments due on the same date are considered one installment.

**Payments Accepted.** Generally, any amount of funds may be paid at any time, this excludes Interest only payment arrangements where prepayment of principal is disallowed within the Agreement.

**Installments.** Regular installments are due on the same calendar day as the first payment for the period selected. Designated installment due dates (29<sup>th</sup>, 30<sup>th</sup>, and 31<sup>st</sup>) that exceed the days in a specific calendar month shall be due the last day of that calendar month.

**Application of Payments.** Funds paid are credited in their scheduled installment date order. Payments are applied in the following sequence: past due and current Bank fees, interest, principal, late fees and unbilled principal. For interest only payment arrangements, installments will be applied to past due and current Bank fees, past due and current interest, billed principal, fees and if applicable unbilled principal.

**Payments received.** Payments received may be credited up to 3 (Three) business days after receipt at the Escrow Department Office, which does not include a branch office of the Bank.

**Substitution of payer.** Bank is not required to recognize a substitute Payer unless Payer acknowledges the substitution in writing. However, without such acknowledgement, Bank may recognize a person as a substitute Payer if it is reasonable to do so. The substitution Payer must join in this Agreement and acknowledge in writing that Bank has no responsibility as to the validity of any transfer of property from Payer to substitute Payer.

**Absolute transfer by Payee.** Bank is not required to recognize an absolute transfer of Payee unless Payee acknowledges the transfer in writing. However, without such acknowledgement, Bank may recognize a person whom it reasonably determines to be the absolute transfer of Payee. The transferee must join in this Agreement as a Payee, deposit for delivery to Payer, or order, executed documents in the same form (but warranties may be omitted) as the documents originally deposited by Payee for that purpose, and authorize Bank to execute and deliver documents of partial release or transfer in accordance with an arrangement, if any, between Payer and Payee for that purpose.

**Transfer by Bank.** Bank may assign its duties hereunder, thereby be released from its duties, to any corporation regularly engaged in the business of providing the service the Bank is required to provide hereunder.

**Termination by Bank.** Bank may terminate the account upon 30 (Thirty) days' notice to Payer and Payee, without opportunity to cure, either if a delinquency continues for a period of 1 (One) year, or if fees, or other claims in connection with the account, due Bank remain unpaid for a period of 30 (Thirty) days, or if the account has been in existence for 30 (Thirty) years or longer.

**Security Assignment.** Bank is not required to recognize a security Assignee of Payee if Bank is notified of the assignment after the date of acceptance hereof. Among the terms and conditions of any such recognition are that the account cannot be terminated by notice from Payer and

Payee unless all Assignees join in the notice; that where all Payees have assigned, termination for delinquency is upon notice from the Assignee only; that where fewer than all Payees have assigned, termination for delinquency is by notice from the Assignee and the non-assigning Payees; that a priority Assignee (first to notify Bank) is the only Assignee who can give notice of termination for delinquency; that the security Assignee deposit with Bank, for delivery to Payer, or order, a document in the same form (but warranties may be omitted) as the release or transfer document deposited by Payee; and that, if Partial Release (Exhibit B or E) is a part of this Agreement, the Assignee authorizes Bank to execute and deliver partial release documents.

**Amendment.** With the Bank`s approval, the Agreement may be amended by the parties affected.

**Deposited Documents.** Bank is not required to determine (or consider) the effectiveness, correctness, validity, adequacy, or appropriateness, of any document that it is instructed to execute and/or deliver. As an alternative to the delivery of a document to Payer, or order, Bank may, at its discretion, deliver to a title company, public recorder, or filing officer.

**Corporate Stock Held for Delivery.** Where a document for delivery is a certificate of corporate stock, Bank is not required to vote, or otherwise exercise rights with respect to the stock, transmit dividends, or transmit notices.

**Destruction of Documents after Termination by Bank.** After termination by Bank, Bank will deliver deposited documents as directed in writing by Payer and Payee; and, in the absence of such direction, Bank may destroy deposited documents that remain undelivered seven years after termination by Bank.

**Recording Costs.** Payer will reimburse Bank for recording or filing costs incurred.

**Bank`s Right to Retain Documents.** Bank may retain documents until it is paid fees, and other claims in connection with the account, due from a party entitled to delivery.

**Notice to Bank.** Bank is deemed to have notice only when notice is actually received at its Escrow Department office, which does not include a branch office of the Bank.

**“No Balance” Payment Arrangement.** References throughout this Agreement to interest, principal, and payoff are inapplicable if the payment arrangement is of the “no balance” type. Instead of being applied to balances, funds are directly allocated to installments. Payments made are credited within 3 (Three) business days from the date that cash, check, or other item is received. To the extent of its amount, payments made satisfy installments in their scheduled order (including an unlimited number of installments not yet due). Delinquent payments are reported as a balance due.

**Interest Only Payment Arrangement.** Generally, prepayment of interest is not permitted for this type of payment arrangement, unless billed.

**Plus Interest Payment Arrangement.** Interest is due on the same day that an installment, regular or irregular, is due.

**Notice to Payer upon Termination for Delinquency.** Bank is not required to notify Payer prior to termination for delinquency.

**Claim against Bank after Termination.** A claim against Bank is unenforceable unless an action is commenced within 90 (Ninety) days after termination.

**Bank`s Liability.** Bank`s failure to perform or fulfill the covenants or conditions hereof is not actionable unless it is willful or constitutes gross negligence.

**Multiple Payer/Payee.** Where there is more than one Payer (Payee) notice to the prime Payer (prime Payee) is notice to all of them. The Payer (Payee) whose name appears first on the Agreement is the prime Payer (prime Payee) unless Bank is advised in writing by all Payers (Payees). Notice includes demand.

**Electronic Funds Transfer (EFT).** Disbursement will be governed by the rules of the Northwest Clearing House Associates then in effect. If a check or other item upon which EFT disbursement was based is not collected, you may recover from the undersigned by an adjusting debit entry, which you are hereby authorized to initiate in accordance with said rules. The undersigned will hold you harmless from, and will defend and indemnify you against, any and every claim or loss that may arise from your complying with this authorization. Acceptance of this Agreement by First National Bank Alaska is subject to acceptance of the EFT disbursement by the receiving financial institution.

**Termination by Payee.** Termination by Payee may only occur if delinquency period as indicated in the Agreement is reached and upon written notice by Payee to terminate the account and deliver the promissory note (if any) as directed in the notice as accepted by the Bank.

**Close by Mutual Consent.** The Agreement may be closed, upon receipt by Bank of written notice authorized by all parties to terminate the account and deliver the deposited documents as directed by the notice.

**Payee Representations.** Payee represents and warrants that the obligation of the Payer does not constitute a "federally related mortgage loan" as defined in 12 C.F.R. Section 1024.2(b). Without limiting the foregoing, Payee represents and warrants that it meets at least one of the following three criteria: (1) it is not a “creditor” because it does not regularly extend consumer credit, meaning that it (i) extends no more than 25 consumer loans each year, (ii) extends no more than five loans secured by a dwelling per year, and (iii) does not extend any higher-cost mortgage loans as defined by 12 C.F.R. Section 1026.32, (2) it is an agency or instrumentality of a State of the United States of America, or (3) it does not make or invest in residential real estate loans aggregating more than \$1 million per year. Payee further represents that the obligation of the Payer is not related to the purchase by a consumer of a residence pursuant to a "contract for deed" or "installment land contract."

**Interpleader.** If there is a dispute between or among any two or more other parties with respect to a duty of the Bank, the Bank may bring an interpleader action and recover its costs, including attorney fees.

**Entire Agreement.** This Agreement constitutes the entire agreement between the parties. Bank has not made representations or assurance to Payer or Payee not stated herein.