

**BID BOND**  
(Private Work)

KNOW ALL MEN BY THESE PRESENTS, That we \_\_\_\_\_  
Principal and \_\_\_\_\_ as Surety, are held and  
firmly bound unto \_\_\_\_\_  
Obligee, in the sum of \_\_\_\_\_ Dollars  
(\$\_\_\_\_\_ of Bid) for the payment of which we bind ourselves, our legal representatives, successors  
and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has submitted or is about to submit proposal to Obligee on a contract for  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOW, THEREFORE, if the said contract be awarded to Principal and Principal shall, within such time  
as may be specified, enter into the contract in writing and give such bond or bonds as may be specified in the  
bidding or contract documents with surety acceptable to Obligee, or if Principal shall fail to do so, pay to  
Obligee the damages which Obligee may suffer by reason of such failure not exceeding the penalty of this  
bond, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, neither Principal nor Surety shall be bound hereunder unless Obligee prior to  
execution of the final contract shall furnish evidence satisfactory to Principal and Surety that financing has  
been firmly committed to cover the entire cost of the project.

Signed, sealed and dated \_\_\_\_\_.

\_\_\_\_\_  
Principal

By \_\_\_\_\_

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
, Attorney-in-Fact

(TO BE TYPED ON LENDER'S LETTERHEAD)

(Insert Date)

(Surety Company)

**Re: Project:**  
**Contractor:**  
**Owner:**  
**Contract Price:**

Gentlemen:

This is to confirm that we have completed arrangements for a loan to the Owner in the principal amount of     . Pursuant to and upon the conditions set forth in the Loan Agreement between us and the Owner, the sum of      is set aside to pay the Contractor for work performed by it under its construction contract dated     , with the Owner for construction of     .

We will disburse funds directly to the Contractor for work done by it, upon satisfaction of the conditions set forth in the Loan Agreement for each payment requested.

In the event we declare a default by the Owner as borrower under any of the Loan Documents, as defined in the Loan Agreement, and if we elect to discontinue disbursement of any of the loan proceeds to be used for payment of the Contractor, we agree to provide the Contractor with written notice of such default; and in any such event we shall continue to reimburse the Contractor for all costs incurred by it under its construction contract and payable by the Owner for the period up to and including the fifteenth (15th) day after the giving of such written notice.

In the event that the Contractor were to be in default and as a result thereof we require that the Surety complete the work, we hereby agree that the undisbursed balance of the funds set aside to pay the Contractor shall be available to and may be used by the Surety on the same conditions that govern payments to the Contractor. We further agree that the Surety has no obligation to repay any of the loan proceeds advanced by us.

Very truly yours,

\_\_\_\_\_  
ACCEPTED & AGREED:  
(Owner)

By \_\_\_\_\_

Date \_\_\_\_\_

Bond

LENDER'S DUAL OBLIGEE RIDER TO PERFORMANCE BOND

WHEREAS, Heretofore, on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,

\_\_\_\_\_ as Contractor entered into a written agreement with \_\_\_\_\_

\_\_\_\_\_ as Owner for the construction of \_\_\_\_\_

\_\_\_\_\_, and  
WHEREAS, the Contractor and \_\_\_\_\_ a \_\_\_\_\_ corporation,  
as Surety, executed and delivered to the Owner their joint and several Performance Bond, and

WHEREAS, the Owner has arranged for a loan for the exclusive purpose of payment for the performance of said Contract and has requested the Contractor and Surety to join with the Owner in the execution and delivery of this Rider, and the Contractor and Surety have agreed so to do upon the conditions herein stated.

NOW THEREFORE, in consideration of one dollar and other good and valuable consideration, receipt of which is acknowledged, the undersigned agree that the said Performance Bond shall be, and is, amended as follows:

1. The name of \_\_\_\_\_ as Lender shall be added to said bond as a named Obligee.
2. The rights of the Lender as a named Obligee shall be subject to the condition precedent that the Owner's obligations under the contract be performed.
3. The aggregate liability of the Surety under said bond to the Owner and the Lender, as their interests may appear, is limited to the penal sum of the said bond.
4. The Surety may, at its option, make any payment under said bond by check issued jointly to the Owner and the Lender.
5. Except as herein modified, said Performance Bond shall be and remain in full force and effect.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Seal if corporation)  
Attest

\_\_\_\_\_  
Owner

By \_\_\_\_\_

(Seal if corporation)  
Attest

\_\_\_\_\_  
Contractor

By \_\_\_\_\_

By \_\_\_\_\_  
Attorney-in-Fact

## **ESCROW AGREEMENT**

THIS AGREEMENT is made on \_\_\_\_\_, by and among \_\_\_\_\_  
\_\_\_\_\_  
(the "Owner"), \_\_\_\_\_  
(the "Contractor), and \_\_\_\_\_ (the "Escrow Agent").

## **THE BACKGROUND**

A. The Owner has entered into a Construction Contract dated \_\_\_\_\_  
(the "Construction Contract") with the Contractor relating to \_\_\_\_\_. A  
copy of the Construction Contract is attached hereto as Exhibit "A".

B. As agreed by all parties, \_\_\_\_\_  
(Construction Manager) will certify all payments due to the Contractor under the Construction  
Contract.

C. \_\_\_\_\_ (the "Surety") has issued in  
favor of the Owner as obligee a Performance & Payment Bond covering the Construction  
Contract.

D. At the request of the Contractor and the Surety, the Owner has agreed to  
deposit with the Escrow Agent the sum of \_\_\_\_\_, upon the terms and conditions set forth  
below.

## AGREEMENT

With full knowledge of the foregoing facts the parties hereby mutually agree as follows:

1. Deposit of Funds with Escrow Agent. Escrow Agent hereby acknowledges receipt of the sum of \_\_\_\_\_ from the Owner.

2. Interest on Escrowed Proceeds. Escrow Agent shall deposit the funds in \_\_\_\_\_ Bank account as directed by Owner and any interest earned will accrue to Owner.

3. Disbursement of Escrowed Proceeds. Pursuant to the payment requirements set forth below, the Escrow Agent shall disburse the escrowed proceeds solely to the Contractor for work performed under the Construction Contract. No payment shall require the consent of the Surety or be made payable to the Surety unless the Escrow Agent shall have been advised in writing by either the Surety or the Owner that the Surety has elected to complete the work pursuant to the conditions of its Bond.

4. Release of Undisbursed Escrowed Proceeds. After the work under the Construction Contract has been completed and the final payment (representing the Contractor's retention) has been paid to the Contractor pursuant to the Construction Contract, any undisbursed funds held by the Escrow Agent after deducting therefrom any portion of the final payment held to cover remedial work, shall be paid to the Owner. Owner and Contractor will inform Escrow Agent in writing when final payment has been made pursuant to the Construction Contract. If either Owner or Contractor, within ten (10) days of the request to do so, fails to sign a statement in writing that final payment has been made, and if such failure to sign is without a just or valid reason, then such party shall be liable to the other party for all damages and expenses arising out of such refusal to sign including reasonable attorneys' fees and costs.

Escrow Agent is in no way to be concerned with the construction and/or completion of any improvements on the property described above, for the payments of any bills in connection herewith, for the condition of title to said property, for any agreements between the parties other than the Escrow Agreement, its only duty being to hold and disburse the funds in accordance with the written instructions of Owner and Contractor.

5. Escrow Agent's Fees. The Owner shall pay for all costs charged by the Escrow Agent for this Agreement.

6. Liability for Disbursement. Escrow Agent shall have no liability of any kind for disbursement of any items of property and/or funds referred to above beyond those furnished pursuant to this Escrow Agreement. Escrow Agent shall hold said funds and disburse the same until they shall be exhausted, unless the Escrow Agent, Contractor and Owner shall otherwise agree in writing.

7. Maintenance of Records. Escrow Agent shall maintain records which accurately reflect each transaction made by Escrow Agent. The records shall be located at Escrow Agent's office, and shall be available for inspection and copying by Contractor and/or Owner during normal business hours of Escrow Agent. Escrow Agent shall certify such information as being correct as the parties hereto may from time to time request.

8. Amended Instructions. Any amended, supplemental or additional instructions given to Escrow Agent shall be in writing and duly accepted by Escrow Agent. All such amended, supplemental or additional instructions shall be subject to all of the conditions of this Escrow Agreement.

9. Governing Law. This Escrow Agreement shall be construed and enforced in accordance with the laws of the State of

10. Binding Effect. This Escrow Agreement shall be binding upon and inure

to the benefit of the parties hereto and their respective heirs, administrators, executors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

The foregoing terms, conditions, provisions and instructions have been read and are understood and agreed to by each of the undersigned.

CONTRACTOR:

BY \_\_\_\_\_

OWNER:

BY \_\_\_\_\_

ESCROW AGENT:

BY \_\_\_\_\_  
Its