

# ASHCROFT LEGAL & ESCROW SERVICES, PLLC.

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Escrow File No.: \_\_\_\_\_  
Title Order No.: \_\_\_\_\_

Borrower(s): \_\_\_\_\_

## CLOSING AGREEMENT AND ESCROW INSTRUCTIONS For Refinancing Transaction

The undersigned borrower and lender (referred to herein as "the parties") hereby designate and appoint **Ashcroft Legal & Escrow Services, PLLC.** (referred to herein as "the closing agent") to act as their closing agent according to the following agreements and instructions.

### IT IS AGREED, AND THE CLOSING AGENT IS INSTRUCTED, AS FOLLOWS:

**Terms of Financing Transaction.** The terms and conditions of the financing transaction which is the subject of these instructions (referred to herein as "the transaction"), and the real property which will be used to secure payment of the loan (referred to herein as "the property") are set forth in the loan commitment or other written document or agreement, and any attachments, amendments or addenda to that commitment, document or agreement (referred to herein as "the parties' agreement"), which is made a part of these instructions by this reference. Any changes to the parties' agreement will be made a part of these instructions, without further reference, when signed by the parties and delivered to the closing agent. These instructions are not intended to amend, modify or supersede the terms and conditions of the parties' agreement and if there is any conflict or inconsistency between these instructions and the parties' agreement, the terms and conditions of the parties' agreement shall control.

**Closing Date.** The date on which the documents required to close the transaction are filed for record (referred to herein as "the closing date") shall be on or before the date for closing of the transaction specified in the parties' agreement or in an addendum extending that date. Final disbursement of the sale and/or loan proceeds may be delayed until title insurance is cleared (usually later on the closing date or next regular business day) or until one business day after funds are deposited in accordance with Substitute Senate Bill No. 5340.

**Documents.** The closing agent is instructed to select, prepare, complete, correct, receive, hold, record and deliver documents as necessary to close the transaction. The closing agent may request that certain documents be prepared or obtained by the parties or their attorneys, in which case the parties shall deliver the requested documents to the closing agent before the closing date. Execution of any document will be considered approval of its form and contents by each party signing such document.

**Deposits and Disbursements of Funds.** Before the closing date, each party shall deposit with the closing agent all funds required to be paid by such party to close the transaction. The closing agent is authorized, but not required, to consider the lender's written commitment to deposit funds as the equivalent of a deposit of such funds, if all conditions of the commitment will be met on or before the closing date. All funds received by the closing agent shall be deposited in a trust account with any bank doing business in the State of Washington and may be transferred to any other such accounts. The closing agent shall not be required to disburse any funds deposited by check or draft until it has been advised by its bank that such check or draft has been honored. All disbursements shall be made by the closing agent's check.

**Settlement Statement.** The closing agent is instructed to prepare a settlement statement showing all funds deposited for the account of each of the parties and the proposed disbursements from such funds. No funds shall be disbursed until the parties have examined and approved the settlement statement. Some items may be estimated, and the final amount of each estimated item will be adjusted to the exact amount required to be paid at the time of disbursement. The settlement statement will be subject to audit and any errors or omissions may be corrected at any time, including after the transaction has closed. If any monetary error is found, the amount will be immediately paid by the party liable for such payment to the party entitled to receive it.

Costs and expenses shall be assessed according to the party on whose behalf the cost or expense was occasioned. Closing Agent shall include an estimate of costs in the estimated closing statement. The actual costs may be greater or less than the estimate. No post-closing adjustments will be made, and if Closing Agent's estimate as to costs exceeds the actual cost incurred, Closing Agent shall retain the excess and, accordingly, Closing Agent may obtain a profit on the estimated costs.

**Title Insurance.** The closing agent is instructed to obtain and forward to the parties a preliminary commitment for title insurance as required by the parties' agreement on the property and on any other parcel of real property that will be used to secure payment of any obligation created in the transaction (referred to herein as "the title report"). The closing agent is authorized to rely on the title report in the performance of its duties and shall have no responsibility or liability for any title defects or encumbrances which are not disclosed in the title report.

**Verification of Existing Encumbrances.** The closing agent is instructed to request a written statement from the holder of each existing encumbrance on the property, verifying its status, terms, and balance owing. The closing agent is authorized to rely upon such written statements in the performance of its duties, without liability or responsibility for their accuracy or completeness.

**Separate Instructions From Lender.** If the lender does not sign these instructions, but instead delivers other written instructions to the closing agent, such instructions are accepted and agreed to by the borrower and are made a part of these instructions by this reference. If there is any conflict or inconsistency between the instructions in this form and the lender's instructions, the terms and conditions of the lender's instructions shall control.

**Instructions From Third Parties.** If any written instructions necessary to close the transaction according to the parties' agreement are given to the closing agent by anyone other than the parties or their attorneys, such instructions are accepted and agreed to by the parties.

**Disclosure of Information to Third Parties.** The closing agent is authorized to furnish, upon request, copies of any closing documents, agreements or instructions concerning the transaction to the parties' attorneys, and to any real estate agent, lender or title insurance company involved in the transaction. Other papers or documents containing personal or financial information concerning any party may not be released to anyone other than the party's attorney or lender, without prior written approval.

**Potential Legal Problems.** If the closing agent becomes aware of any facts, circumstances or potential problems which in the closing agent's opinion should be reviewed by any of the parties' attorneys, the closing agent is authorized, in its sole discretion, to advise the parties of such facts, circumstances or potential problems and recommend that legal counsel be sought.

**Closing Agents Fees and Expenses.** The closing agents fee is intended as compensation for the services set forth in these instructions. If additional services are required to comply with any change or addition to the parties agreement or these instructions, or as a result of any party's assignment of interest or delay in performance, the parties agree to pay a reasonable additional fee for such services. The parties shall also reimburse the closing agent for any out-of-pocket costs and expenses incurred by it under these instructions. The closing agents fees, costs and expenses shall be due and payable on the closing date or other termination of the closing agents duties and responsibilities under these instructions, and shall be paid by the borrower unless otherwise provided in the parties agreement.

**Cancellation.** These instructions may be canceled by a written agreement, signed by all of the parties, and payment of the closing agents fees, costs and expenses. Upon receipt of such agreement and payment, the closing agent shall return any money or documents then held by it to the parties that deposited the same, and shall have no further duties or responsibilities under these instructions.

**Inability to Comply With Instructions.** If the closing agent receives conflicting instructions or determines, for any reason, that it cannot comply with these instructions by the date for closing specified in the parties agreement or in any written extension of that date, it shall notify the parties, request further instructions, and in its discretion: (1) continue to perform its duties and close the transaction as soon as possible after receiving further instructions, or (2) if no conflicting instructions have been received, return any money or documents then held by it to the parties that deposited the same, less any fees and expenses chargeable to such party, or (3) commence a court action, deposit the money and documents held by it into the registry of the court, and ask the court to determine the rights of the parties. When the money and documents have been returned to the parties or deposited into the registry of the court, the closing agent shall have no further duties or responsibilities under these instructions.

**Disputes.** Should any dispute arise between the parties, or any of them, and/or any other party, concerning the property or funds involved in the transaction, the closing agent may, in its sole discretion, hold all documents and funds in their existing status pending resolution of the dispute, or join or commence a court action, deposit the money and documents held by it with the court, and ask the court to determine the rights of the parties. Upon depositing said funds and documents with the court, the closing agent shall have no further duties or responsibilities under these instructions. The parties jointly and severally agree to pay the closing agents costs, expenses and reasonable attorneys fees incurred in any lawsuit arising out of or in connection with the transaction or these instructions, whether such lawsuit is instituted by the closing agent, the parties, or any other person.

**Reimbursement of Closing Agent for Obligations Paid on Behalf of Client.** Should the closing agent payoff a lien, judgment, or any other encumbrance on behalf of any party to the transaction, either before or after closing, the party expressly agrees to repay the closing agent the entire amount advanced on their behalf within 30 days, unless the closing agent expressly agrees otherwise.

**Attorney's & Collection Agency Fees.** Should it be necessary for the closing agent to institute legal proceedings to enforce it rights for any dispute that arises out of this transaction, including but not limited to payment of liens, judgments or encumbrances, paid by the closing agent on behalf of the client, the **parties expressly agree** that the prevailing party shall be awarded reasonable attorney's fees incurred as a result of said legal proceedings to include the cost of collection agency fees if applicable.

**Vesting and Manner of Holding Title.** If the parties or the parties' lender instructs the closing agent to change the manner in which the parties are vested or hold title to the property as a condition of closing the loan transaction the closing agent will follow those instructions. The closing agent will not, however, be held responsible or liable in **any manner what-so-ever** for any damages that may result from following the instructions to change the manner in which the parties are vested or hold title to the property, nor be held liable for any damages that result from the conveyance. The closing agent will not assist nor be held liable if the parties to the transaction decide to change the manner in which they are vested or hold title to the property after the transaction has closed. This provision applies to all changes in vesting including properties held in a trust, LLC, Corporation, or any other legal entity.

**Notices.** Any notice, declaration or request made under these instructions shall be in writing, signed by the party giving such notice or making such declaration or request, and personally delivered or mailed to the closing agent and other parties at their addresses set forth in these instructions.

**Amendments.** Any amendment, addition or supplement to these instructions must be in writing, signed by the appropriate parties and delivered to the closing agent.

**Counterparts.** These instructions may be executed in one or more counterparts with like effect as if all signatures appeared on one copy.

**Effect.** These instructions shall bind and benefit the parties, the closing agent, and their successors in interest.

**Definitions.** When used herein or in any amendment, addition or supplement hereto, words and phrases are defined and are to be construed as follows:

The word "borrower" refers to all persons and entities identified as such by their signatures on this document, jointly and severally unless otherwise indicated.

The word "lender" refers to any lending institution or other party that has agreed to provide all or part of the financing for the transaction.

The phrase "these instructions" refers to the agreements, instructions and provisions set forth in this document and all amendments, additions and supplements to this document.

The phrase "the property" refers to all real and personal property identified in the parties agreement including any other parcel of real property that will be used to secure payment of any obligation created in the transaction.

The phrase "outside of escrow" refers to any duty, obligation or other matter which is the sole responsibility of the parties or of any party, and for which the closing agent shall have no responsibility or liability.

In these instructions, singular and plural words, and masculine, feminine and neuter words, shall be construed interchangeably as may be appropriate in the context and circumstances to which such words apply.

## **MATTERS TO BE COMPLETED BY THE BORROWER AND LENDER IMPORTANT-READ CAREFULLY**

The following items must be completed by the parties, outside of escrow, and are not part of the closing agents duties under these instructions.

**Inspection and Approval of the Property.** Any required inspections or approvals of the property, or of any items of personal property involved in the transaction, or of any improvements, additions or repairs to the property or items of personal property will be arranged and completed by the parties, outside of escrow. The closing agent shall have no liability with respect to the physical condition of the property, or any buildings, improvements, plumbing, heating, cooling, electrical, septic or other systems on the property, and no responsibility to inspect the property, or to otherwise determine its physical condition, or to determine whether any required improvements, additions or repairs have been satisfactorily completed.

**Fire or Casualty Insurance.** If a new policy of fire, hazard or casualty insurance on the property is necessary to close the transaction, the borrower will arrange for the policy to be issued, outside of escrow, and will provide evidence of the required insurance coverage to the closing agent before the closing date. Unless otherwise instructed, the closing agent shall have no responsibility to contract for or obtain any policy of fire hazard or casualty insurance on the property, or any assignment of such policy.

**Collection Account.** If any financing for the transaction will be provided by a private party, the parties are advised to open a collection account at a financial institution to receive and disburse payments to be made under the private promissory note or contract. The collection account shall be established by the parties outside of escrow and shall not be the responsibility of the closing agent.

**Payment of Omitted Taxes.** If any additional real property taxes are assessed for recent improvements made to the property and not added to the tax rolls before the closing date, the parties shall pay their respective shares of such omitted taxes, prorated as of the closing date, within 30 days after receipt of notification that such taxes have been assessed. The closing agent shall not be responsible or liable for any assessment, collection or payment of omitted taxes.

**Individual Taxes.** The parties are advised to consult with their attorneys to determine whether they must report income, deduct expenses or losses, or withhold or pay any income or business taxes as a result of the transaction. The closing agent shall have no responsibility for the parties individual tax consequences arising from the transaction.

**Approvals and Permits.** The parties are advised to consult with their attorneys to determine whether any building, zoning, subdivision, septic system, or other construction or land use permits or approvals will be required, either before or after the closing date. The closing agent shall have no responsibility with respect to any such permit or approval, and shall have no liability arising from the failure of any party to obtain, or from the refusal of any governmental authority to grant, any such permit or approval.

**Compliance With Certain Laws.** The parties are advised to consult with their attorneys to determine their responsibilities for the parties compliance, nor any liability arising from the failure of any party to comply, with any such law.

### **Additional Agreements, Instructions and Disclosures:**

**NOTICE TO PARTIES**

The services of the closing agent under these instructions will be performed by a person certified by the Washington State Supreme Court to provide such services. Under that certification, Ashcroft Legal & Escrow may select, prepare and complete certain documents on forms which have been approved for their use. The specific documents prepared are: **See Attached Exhibit "A"**

You are further advised that:

**THE ESCROW CLOSER IS NOT ACTING AS THE ADVOCATE OR REPRESENTATIVE OF EITHER (OR ANY) OF THE PARTIES.  
THE DOCUMENTS PREPARED BY THE CLOSING AGENT WILL AFFECT THE LEGAL RIGHTS OF THE PARTIES.  
THE PARTIES' INTERESTS IN THE DOCUMENTS MAY DIFFER.  
THE PARTIES HAVE A RIGHT TO BE REPRESENTED BY LAWYERS OF THEIR OWN SELECTION.**

**Furthermore, The Closing Agent cannot give legal advice as to the manner in which the documents affect the parties unless an attorney client relationship has been entered into between Ashcroft Legal & Escrow and the Client(s). The existence of an attorney client relationship shall be evidenced by Letter of Engagement which will be separate and apart from these instructions.**

**BY SIGNING THESE INSTRUCTIONS, EACH PARTY ACKNOWLEDGES: I have been specifically informed that the closing agent has not offered us any advice concerning the merits of the transaction or the documents that will be used to close the transaction.**

**The closing agent has not offered any legal advice or referred me to any named attorney, but has clearly requested that I seek legal counsel if I have any doubt concerning the transaction or these instructions.**

**I have had adequate time and opportunity to read and understand these instructions and all other existing documents referred to in these instructions.**

Borrower:

\_\_\_\_\_  
Date  
\_\_\_\_\_  
Date  
\_\_\_\_\_  
Date  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Lender  
\_\_\_\_\_  
By

Borrower's Mailing Address:

Lender's Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Phone  
Home:  
Work:

Office:

Accepted:

By \_\_\_\_\_

**EXHIBIT "A"**

**ESCROW FILE NO.:**

**Escrow Closer:**

\_\_\_\_\_

**TITLE FILE NO.:**

\_\_\_\_\_

**BORROWER(S):**

**FORMS**

**SECTION 1: MORTGAGE LENDING DOCUMENTS**

\_\_\_\_\_ All documents approved and designed for use by the Secondary Mortgage Market, including Notes, Deeds of Trust, and Riders. The Secondary Mortgage Market is defined as federally related institutions such as FNMA, FHLMC and GNMA, except Regulation "Z".

**SECTION 2: ESCROW DOCUMENTATION**

- \_\_\_\_\_ Statutory Warranty Deed
- \_\_\_\_\_ Statutory Warranty Deed (Fulfillment of REC)
- \_\_\_\_\_ Quitclaim Deed
- \_\_\_\_\_ Seller's Assignment of Contract and Deed
- \_\_\_\_\_ Purchaser's Assignment of Contract and Deed
- \_\_\_\_\_ Bargain and Sale Deed
- \_\_\_\_\_ Deed of Trust (Short Form)
- \_\_\_\_\_ Assignment of Deed of Trust
- \_\_\_\_\_ Deed of Trust (Long Form)
- \_\_\_\_\_ Deed of Trust (Amended Long Form)
- \_\_\_\_\_ Request for Full Reconveyance
- \_\_\_\_\_ Request for Partial Reconveyance
- \_\_\_\_\_ Promissory Note - Monthly Installments
- \_\_\_\_\_ Promissory Note - Interest Included - Due Date
- \_\_\_\_\_ Promissory Note - Interest Extra
- \_\_\_\_\_ Promissory Note - Straight
- \_\_\_\_\_ Request for Notice
- \_\_\_\_\_ Bill of Sale
- \_\_\_\_\_ Subordination Agreement
- \_\_\_\_\_ Real Estate Contract (Short Form)
- \_\_\_\_\_ Real Estate Contract (Long Form)
- \_\_\_\_\_ Mortgage (Statutory Form)
- \_\_\_\_\_ Satisfaction of Mortgage
- \_\_\_\_\_ Partial Release of Mortgage
- \_\_\_\_\_ Satisfaction of Lien
- \_\_\_\_\_ Partial Release of Lien
- \_\_\_\_\_ Satisfaction of Judgment
- \_\_\_\_\_ Partial Release of Judgment
- \_\_\_\_\_ Waiver of Lien
- \_\_\_\_\_ Partial Waiver of Lien
- \_\_\_\_\_ Special Power of Attorney (Sale)
- \_\_\_\_\_ Special Power of Attorney (Purchase/Encumber)

**SECTION 3: U.C.C. FORMS**

\_\_\_\_\_ All U.C.C. filing forms including Security Agreement Forms with the exception of:

- WBA UCC 2
- UCC 4
- UCC 5

**SECTION 4: EXCISE TAX AFFIDAVIT FORMS**

- \_\_\_\_\_ Real Excise Tax Affidavit
- \_\_\_\_\_ Department of Licensing Forms

**SECTION 5: FARMERS HOME ADMINISTRATION FORMS**

\_\_\_\_\_ All documents approved and designated for use by the United States Department of Agriculture Farmers Home Administration in connection with closing a FmHA on residential property.

**INITIALS:**

\_\_\_\_\_  
Borrower(s)