

LEGALDOCS

Raw Land Purchase Agreement - Long Form - Example Document

This is a sample Raw Land Purchase Agreement, Long Form, based on a hypothetical sale of a some unimproved real property. In general, this Long Form provides much greater structure and detail in the purchase agreement, to a degree normally demanded by experienced transactional attorneys involved with multi-million dollar unimproved real estate deals. A side by side comparison of the Long Form versus the Short Form contracts is really necessary to appreciate the difference between them. In this example, the agreement contains the following basic terms:

- Purchase Price: \$3,256,750;
- Deposit: \$100,000;
- Description of due diligence contingency dates;
- Description of escrow closing date;
- Property description, address and legal description to be attached;
- Name of Title Company and Escrow Company;
- Delivery of preliminary title report and dates for delivery;
- Delivery of property disclosure documents and dates for delivery;
- Description of brokers and compensation;
- Expanded description of different warranties Seller will make; >LI> Description of manner of waiver or objection to contingencies;
- Provisions of for written notice to the parties;
- Signing information.
- Property inspection terms re. notice and insurance;
- Escrow Agent approval as to form of Escrow Instructions;

This Agreement can be used as the basic and binding sales contract for unimproved real estate, which the parties then would hand to the escrow agent, and would then be used as the escrow agent's instructions for the transaction.

PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

THIS PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS ("Agreement"), dated for reference purposes _____, is entered into on this day by and between Morgan Holding Company, a partnership ("Seller"), and 555 Field Point Associates, LLC, a limited liability company ("Buyer").

ARTICLE 1. RECITALS

1.1 The Property. Seller is the owner of unimproved real property commonly known as 234 - 256 Field Point Lane, Temecula, CA, located in the City of Temecula, County of Riverside, State of California. The Property is more particularly described on Exhibit "A" attached hereto (the "Land"). The Land is also referred to as the "Property", which term shall also encompass each of the following: (i) all of Seller's right, title and interest in and to any easements, privileges, rights of way and other rights, including but not limited to air rights, mineral, water and riparian rights appurtenant to the Land; (ii) all tangible personal property, if any, affixed to the Property and used in connection with the ownership, operation or maintenance of the Property, including without limitation all installed and uninstalled sign poles, signs, landscaping and all licenses, permits, plans and specifications, all warranties, guaranties, sureties and all pending and future awards in condemnation, if any, owned or held by Seller that pertains to the ownership, maintenance, use or operation of the Property; and (iii) all permits, land use entitlements, development rights, sewer capacity, map approvals, trip generation rights, density allocations and other rights or approvals relating to or authorizing the development, construction, ownership, or the operation of the Property, and any bonds held by third parties relating to the same.

1.2 Intention of the Parties. Buyer wishes to purchase the Property from Seller, and Seller is willing to sell the Property to Buyer, all on the terms and subject to the conditions of this Agreement.

ARTICLE 2. DEFINITIONS

2.1 Definitions. Unless the context otherwise indicates, whenever used in this Agreement:

2.1.1 "Business Day" means any day when City's administration offices are open for the transaction of business by members of the general public.

2.1.2 "Cash" means (i) currency, or (ii) a check(s), currently dated, payable to Escrow Holder and honored upon presentation for payment or otherwise constituting immediately available funds, or (iii) if Escrow Holder requires or if the party depositing funds so desires, funds wire-transferred into Escrow Holder's general escrow account(s).

2.1.3 "City" means the City of Temecula.

2.1.4 "Closing" or "Close of Escrow" means the date Seller's Grant Deed is filed for record with the County Recorder of Riverside County, conveying the Land from Seller to Buyer.

2.1.5 "Closing Date" means the date which is the later of thirty days after the Contingency Date or December 31, 2003.

2.1.6 "Contingency Date" means the date which is the later of sixty days after the Effective Date, or thirty days following approval by the City of Buyer's preliminary development permit application

2.1.7 "County" means the County of Riverside.

2.1.8 "Deposit" means the sum of \$100,000, which shall be delivered by Buyer to Escrow Holder concurrently with a mutually executed Agreement and which (with any interest accrued thereon) shall be applicable to the Purchase Price.

2.1.9 "Effective Date" means the date on which both Buyer and Seller have signed this Purchase and Sale Agreement, or if signed on different dates, the date this Agreement was signed by the later signing signator.

2.1.10 "Escrow" means the escrow created hereby.

- 2.1.11 "Escrow Holder" means Nationwide Title Insurance Company.
- 2.1.12 "Exchange" means an exchange qualifying for non-recognition of gain under Internal Revenue Code §1031 and the applicable provisions of the laws of the state of California.
- 2.1.13 "General Assignment and Transfer" means an instrument in the form of Exhibit "B", pursuant to which Seller shall convey to Buyer any tangible or intangible personal property owned by Seller that relates to the Property.
- 2.1.14 "Hazardous Materials" means any substance, material or other thing regulated by or pursuant to any federal, state or local statute or ordinance by reason of its potential for harm to human health or the environment, or because of its flammability, toxicity, reactivity or corrosiveness, including but not limited to those substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; or the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; or the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; and also including those substances defined as "hazardous wastes" or as "hazardous substances" pursuant to the laws of the state of California; and in the regulations adopted and publications promulgated pursuant to all such current and future federal and state laws and local ordinances.
- 2.1.15 "Permitted Exceptions" means those covenants, conditions, reservations, restrictions, easements and other matters (excepting Property Taxes, deeds of trust or other liens) listed as exceptions to coverage in the Preliminary Report that are approved by Buyer or deemed to have been approved by Buyer pursuant to Paragraph 6.1.1.
- 2.1.17 "Preliminary Report" means that certain preliminary report to be issued by Title Insurer pursuant to Paragraph 6.1.1, together with legible copies of all recorded documents referred to therein.
- 2.1.18 "Property Documents" means all reports, studies and information relating to the Property, including without limitation the items described in Paragraph 7.2.
- 2.1.19 "Property Taxes" means all charges against the Land evidenced by the secured tax bill issued by the Tax Collector of the County, including, but not limited to, amounts allocated to (i) County or City general governmental purposes, (ii) bonded indebtedness of County or City, (iv) bonded or other indebtedness and operating expenses of any school, college, sewer, water, irrigation, hospital, library, utility, county service or other district, and (v) any other lawful purpose.
- 2.1.20 "Purchase Price" means the sum of Three Million, Two Hundred Fifty Six Thousand, Seven Hundred and Fifty Dollars (\$3,256,750).
- 2.1.21 "Seller's Grant Deed" means a grant deed in the form of Exhibit "C".
- 2.1.22 "Survey" means an ALTA survey for the Property.
- 2.1.23 "Title Insurer" means Nationwide Title Insurance Company - Escrow Division.
- 2.1.24 "Title Policy" means an ALTA extended coverage owner's policy of title insurance, with liability in the amount of the Purchase Price, insuring that the fee title to the Land vests in Buyer subject only to the Permitted Exceptions and other matters described in Paragraph 8.1.2, and including such endorsements as Buyer may specify.

ARTICLE 3. AGREEMENT OF PURCHASE AND SALE

3.1 Agreement of Purchase and Sale. In consideration of the covenants contained in this Agreement, Buyer shall purchase the Property from Seller, and Seller shall sell the Property to Buyer, for the

Purchase Price and upon the terms and subject to the conditions of this Agreement.

ARTICLE 4. BUYER'S DELIVERIES TO ESCROW HOLDER

4.1 Deposit. Buyer shall, concurrently with delivery of this Agreement, deliver to Escrow Holder the Deposit in Cash. The Deposit shall be invested by Escrow Holder pursuant to Paragraph 10.1, and both the Deposit and all interest accrued thereon shall be applicable to the Purchase Price.

4.2 Deliveries Before Closing Date. Subject to the following Paragraph, Buyer shall, no later than 1:00 p.m. of the last regular business day before the Closing Date (or, with respect to Cash being wire-transferred to Escrow Holder, no later than 11:00 a.m. on the Closing Date), deliver to Escrow Holder each of the following:

4.2.1 Cash for Purchase Price. In Cash, the balance of the Purchase Price after crediting the Deposits.

4.2.2 General Assignment. The General Assignment, signed by Buyer.

4.2.3 Additional Documents. Any additional documents that Escrow Holder or Title Insurer may reasonably require that are not inconsistent with the other provisions of this Agreement.

4.2.4 Buyer's Charges. In Cash, the charges to Buyer under the Article 9. of this Agreement entitled "Prorations, Fees and Costs".

4.3 Condition to Delivery. Buyer's obligation under the preceding Paragraph to deliver funds is conditional upon Buyer's receipt of written or telephonic notification by Escrow Holder that, except for the delivery of such funds, this Escrow is in condition to be closed. Escrow Holder is instructed to give the notification to Buyer when this Escrow can, except as to the receipt and disbursement of Cash and the recording of documents, be closed.

ARTICLE 5. SELLER'S DELIVERIES TO ESCROW HOLDER

5.1 Deliveries Before Closing Date. Seller shall (i) convey to Buyer the fee estate to the Property free of all encumbrances and matters except those permitted by Paragraph 8.1.2, and (ii) no later than 3:00 p.m. of the second (2nd) Business Day before the Closing Date deliver to Escrow Holder:

5.1.1 Seller's Grant Deed. Seller's Grant Deed, conveying the Land to Buyer, signed and acknowledged by Seller and such person(s) as Title Insurer requires in order to issue the Title Policy.

5.1.2 General Assignment. The General Assignment, signed by Seller.

5.1.3 FIRPTA Affidavit. A FIRPTA affidavit stating that Seller is not a "foreign person" as defined in the federal Foreign Investment in Real Property Tax Act of 1980 and any similar affidavit to comply with the tax withholding requirements of the state of California; provided, however, that in the event Seller is unable or unwilling to deliver the FIRPTA affidavit, in lieu thereof Escrow Holder shall adjust the funds payable to Seller in such a manner as to comply with the withholding provisions of such statutes.

5.1.4 Additional Documents. Any additional documents that Escrow Holder or Title Insurer may reasonably require that are not inconsistent with the other provisions of this Agreement.

5.1.5 Seller's Charges. If the funds deposited with Escrow Holder by Buyer are insufficient to (i) discharge all encumbrances other than those permitted under Paragraph 8.1.2, and (ii) pay the charges to Seller under the Article of this Agreement entitled "Proration, Fees and Costs," Seller shall deliver to Escrow Holder sufficient funds and instruments to discharge and pay such encumbrances and charges.

ARTICLE 6. SPECIAL CONDITIONS; WAIVER; TERMINATION

6.1 Special Conditions. The Close of Escrow is subject to the following special conditions:

6.1.1 Title. Buyer's approval of the covenants, conditions, reservations, restrictions, easements and other matters (excepting taxes, deeds of trust or other liens) described in the Preliminary Report and depicted on the Survey (if ordered by Buyer), and of any title commitment requested by Buyer from Title Insurer. No later than ten days after the Effective Date, Seller at Seller's expense will deliver to Buyer a Preliminary Report pertaining to the Property dated no earlier than the Effective Date, with legible copies of all listed exceptions. This contingency and resulting conditions to closing shall be conclusively deemed to have failed, and the Escrow will terminate and Deposit returned to Buyer, unless Buyer delivers to Seller and Escrow Holder, on or before the Contingency Date, written notice of approval of the conditions set forth in this Section 6.1.2. Buyer's unconditional notice of approval, if given, shall mean that all covenants, conditions, reservations, restrictions, easements and other matters (excepting taxes, deeds of trust or other liens, and lis pendens notices) listed as exceptions to coverage in the Preliminary Report shall be conclusively deemed to be Permitted Exceptions. Notwithstanding anything in the foregoing to the contrary, in no event will any taxes, deeds of trust or other liens, and lis pendens notices be deemed to be Permitted Exceptions. Nothing in this Paragraph 6.1.1 shall limit or otherwise affect Buyer's right in its sole and absolute discretion to disapprove the suitability of the Property pursuant to Paragraph 6.1.2.

6.1.2 Suitability of the Property for Buyer's Purposes. Buyer's approval of the physical condition, soils, maintenance history, appearance, marketability, investment potential, geological conditions, tax bills, any studies or investigations made by Buyer pursuant to Paragraph 11.3 below, the Property Documents (including the documents to be delivered pursuant to Paragraph 7.2 below) and all other aspects of the Property which Buyer, in its sole and absolute discretion, deems material to Buyer's decision to purchase the Property. This contingency and resulting conditions to closing shall be conclusively deemed to have failed, unless Buyer delivers to Seller and Escrow Holder, on or before the Contingency Date, written notice of approval of the conditions set forth in this Section 6.1.2. In the event that Buyer should in its sole and absolute discretion disapprove this condition, or the contingency is deemed disapproved as set forth above, then the Deposit and all accrued interest thereon shall be returned to Buyer and this Agreement, and all rights and obligations of the parties, shall terminate; provided, however, that Buyer's indemnity obligations under Paragraph 11.3 shall survive any such termination.

6.1.3 Environmental Contingency. Buyer's approval of a Phase I environmental site assessment made at Buyer's expense under Buyer's direction, and all other studies or investigations made by Buyer relating to the presence of Hazardous Materials or other environmental conditions on the Property. This contingency and resulting conditions to closing shall be conclusively deemed to have failed, unless Buyer delivers to Seller and Escrow Holder, on or before the Contingency Date, written notice of approval of the conditions set forth in this Section 6.1.3. In the event that Buyer should in its sole and absolute discretion timely disapprove this environmental contingency, or the contingency is deemed disapproved as set forth above, then the Deposit and all accrued interest thereon shall be returned to Buyer and this Agreement, and all rights and obligations of the parties, shall terminate; provided, however, that Buyer's obligations under Paragraph 11.3 shall survive any such termination.

6.1.4 No Material Adverse Change in Property. No earlier than two (2) business days prior to the Closing Date, Seller's written confirmation to Escrow that there has been no material adverse change in the condition or status of the Property occurring subsequent to the Effective Date, and that all of the representations set forth in Article 12 remain true and correct in all material respects.

6.1.5 Continuing Validity of Representations and Warranties. Buyer's confirmation that the representations and warranties of Seller as set forth in Article 12 remain true and correct in all material respects. This condition shall be conclusively deemed satisfied unless Buyer delivers written notice of disapproval to Seller and to Escrow Holder, on or before 4:30 p.m. on the second Business Day before the Closing Date. Buyer's notice of disapproval shall specify the representation and/or warranty that is no longer correct and a detailed statement of the grounds for so concluding.

6.2 Waiver. The special conditions described in Paragraph 6.1 are for the benefit of Buyer, and if not timely satisfied may thereafter be waived unilaterally by Buyer unless and until such time as either party elects to terminate this Escrow pursuant to the following Paragraph. Any waiver will be effective only if the same is (i) in writing, (ii) signed by the waiving party(ies), and (iii) delivered to Escrow Holder prior to delivery by either party of a written notice of termination pursuant to the following Paragraph.

6.3 Termination not due to Default by Buyer. If this Agreement and Escrow Instructions are terminated without default by either party at Buyer's election because any special condition described in Paragraph 6.1 has been neither satisfied nor waived in the manner and by the time specified therein, then (i) Buyer shall be entitled to the return of the Deposit and all accrued interest thereon, (ii) Buyer shall have no further right or interest in the Property or to purchase the Property under this Agreement, and (iii) each party waives any claims against the other hereunder, except for obligations under Paragraph 11.3.3.

6.4 Termination due to Default by Buyer. In the event this Agreement and Escrow are terminated by Seller by reason of Buyer's default hereunder following satisfaction or waiver by Buyer of the special conditions described in Paragraph 6.1, and subject to the liquidated damages provisions being initialed by both Seller and Buyer below, Seller shall be entitled to retain the Deposit as liquidated damages pursuant to Paragraph 13.3 below.

6.5 Termination due to Default by Seller. In the event this Agreement and Escrow are terminated by Buyer due to Seller's default, the provisions of Sections 8.2.1 and 8.2.2 regarding termination, and 8.2.3 regarding legal remedies, shall apply.

ARTICLE 7. PRE-CLOSING RIGHTS AND OBLIGATIONS

7.1 Limit on Escrow Holder's Responsibilities. Escrow Holder shall have no concern with, nor liability nor responsibility for, this Article.

7.2 Delivery of Property Documents. No later than ten days after the Effective Date, Seller shall provide Buyer copies of the following Property Documents, to the extent not already delivered to Buyer: (i) existing topography maps and surveys, (ii) all existing current reports pertaining to the Property, (iii) all warranties and guaranties relating to the Property that are in Seller's possession; (iv) all permits and governmental correspondence and notices relating to any Property that are in Seller's possession; (v) a current title report, together with copies of all exceptions to title; (vi) preliminary grading plans, building design concepts and elevations in Seller's possession, (vii) all reports concerning the physical condition of any Property that are in Seller's possession; (viii) all soil reports relating to any Property that are in Seller's possession; (ix) any environmental site assessments relating to the Property that are in Seller's possession; and (x) the bill for Property Taxes for the current tax year. Copies of any such documents that come into Seller's possession during the term of this Escrow and have not heretofore been delivered to Buyer shall be immediately delivered to Buyer. In addition to the foregoing, Seller shall, upon reasonable advance notice by Buyer from time to time before the Close of Escrow, permit Buyer and its agents and consultants access to all other studies, reports and other documents and materials pertaining to the Property in the possession of Seller.

7.3 Consultation by Buyer About Property. During the term of this Escrow, Buyer and its representatives, employees, agents and independent contractors may (i) meet with all City, County, district and other governmental entities and agencies, and (ii) discuss with any of those entities or agencies Buyer's proposed development.

7.4 Management of Property. Seller shall manage the Property through the Close of Escrow in a reasonable manner, and shall not take any action or omission which would cause any of the representations or warranties of Seller contained herein to become inaccurate or any of the covenants of Seller to be breached. Seller shall comply with all of its obligations imposed by law relating to the operation of the Property. Seller shall continue to carry its existing insurance through the Closing, and shall not terminate or cancel any such insurance policies. Without Buyer's prior consent, which shall not be unreasonably withheld or delayed, during the term of this Agreement Seller shall not enter into any contracts that will be an obligation affecting the Property subsequent to the Closing, except for contracts entered into in the ordinary course of business that are not chargeable against Buyer, and that are terminable without cause on thirty (30) days' notice without penalty or cancellation fee.

7.5 Cooperation With Exchange. Each party agrees to cooperate with the other party in completing an exchange qualifying for non-recognition of gain under Internal Revenue Code §1031 and the applicable provisions of the tax code of the state of California ("Exchange"), and each party reserves the right to convert this transaction to an Exchange at any time before the closing date. Seller and Buyer agree, however, that consummation of the transaction contemplated by this agreement is not predicated or conditioned on completion of such an Exchange by either party. If a party does elect to complete an Exchange, the other party shall execute all escrow instructions, documents, agreements, or instruments reasonably requested by the first party to complete the Exchange; provided, however, that the other party shall incur no additional liabilities, expenses, or costs as a result of or connected with such Exchange.

ARTICLE 8. THE CLOSING

8.1 Conditions to Closing. Escrow Holder shall close this Escrow on the Closing Date by (i) filing for record Seller's Grant Deed (and such other documents as may be necessary to procure the Title Policy), and (ii) delivering funds and documents to the parties (as set forth in the Article of this Agreement entitled "Distribution of Funds and Documents") WHEN AND ONLY WHEN each of the following conditions has been satisfied:

8.1.1 Deliveries. All funds and documents described in Articles 4 and 5 have been delivered to Escrow Holder.

8.1.2 The Title Policy. Title Insurer is irrevocably committed to issue the Title Policy with liability in the amount of the Purchase Price, insuring that the fee title to the Property vests in Buyer subject only to:

- (a) The exclusions listed in the standard "Schedule of Exclusions from Coverage" in the Title Policy;
- (b) Property Taxes which are, as of the Close of Escrow, not delinquent;
- (c) The exceptions to coverage listed in the Preliminary Report that are Permitted Exceptions; and
- (d) Any liens voluntarily imposed by Buyer.

8.1.3 Special Conditions. The special conditions set forth in Paragraph 6.1 have been either satisfied or waived.

8.2 Delayed Closing; Termination.

8.2.1 Delayed Closing. If Escrow Holder cannot close this Escrow on or before the Closing Date, it shall,

nevertheless, close this Escrow when all conditions have been satisfied or waived, unless after the Closing Date and prior to the Close of Escrow, Escrow Holder receives a written notice to terminate this Agreement and this Escrow from a party who, at the time the notice is delivered, is not in default under this Agreement. The right to terminate this Agreement and this Escrow shall be optional, not mandatory. Escrow Holder shall have no liability or responsibility for determining that a party giving a notice of termination is not in default under this Agreement.

8.2.2 Termination of Escrow. If this Escrow fails to close on the Closing Date, then within two (2) Business Days after receipt of a notice from one party of such party's request to terminate this Escrow, Escrow Holder shall deliver one copy of such notice to the other party. Unless written objection to termination of this Escrow is received by Escrow Holder within three (3) business days after Escrow Holder delivers such notice to the other party, Escrow Holder shall promptly terminate this Escrow and, except as provided in Paragraph 6.4 above, return all funds and documents held by it to the party depositing same, except that Escrow Holder may retain such funds and documents usually retained by escrow agents in accordance with standard escrow termination procedures. Escrow Holder may (i) retain any passbooks or certificates on deposit with Escrow Holder until such time as its escrow fees are paid in full, and/or (ii) deduct from any funds held by Escrow Holder a sufficient amount to pay its escrow fees in full. If written objection to the termination of this Escrow is delivered to Escrow Holder within such three (3) day period, Escrow Holder is authorized to hold all funds and documents delivered to it in connection with this Escrow and Escrow Holder may, in Escrow Holder's sole discretion, take no further action until otherwise directed, either by the parties' mutual written instructions or by a final order or judgment of a court of competent jurisdiction.

8.2.3 Legal Remedies of Parties Not Affected. Neither (i) the exercise of such right of termination, (ii) delay in the exercise of such right, nor (iii) the return of funds and documents, shall affect the right of the party giving notice of termination to recover damages or pursue other available legal remedies for the other party's breach of this Agreement. Nor shall (a) the delivery of such notice, (b) any failure to object to termination of this Escrow, or (c) the return of funds and documents affect the right of the other party to recover damages or pursue other available legal remedies for the breach of the party who gives the notice of termination.

ARTICLE 9. PRORATIONS, FEES AND COSTS

9.1 Property Taxes. Escrow Holder shall prorate (i.e., apportion) Property Taxes between the parties, in Cash, to the Close of Escrow, based on the latest information available to Escrow Holder from the appropriate City or County office; provided, however, that the prorations shall be made by Escrow Holder without regard to any supplemental assessments levied pursuant to the tax laws of the state of California, which shall be prorated pursuant to Paragraph 9.2 below. All prorations shall be done based strictly upon the date on which the Close of Escrow occurs, without regard to the payment due date. With respect to any special assessments, Buyer agrees that it shall (i) take the Property subject to any such special assessments, and (ii) have the then current assessments prorated only to the extent such assessments are paid through the real property tax bills. Seller shall not be obligated to prepay any portion of any special assessments except as may be due and payable on or before the Close of Escrow.

9.2 Supplemental Taxes. With respect to supplemental tax bills, the following shall apply:

9.2.1 Through Escrow. A supplemental tax bill representing the tax due on any supplemental assessment relating to a date prior to the Close of Escrow may be issued either before the Close of Escrow or subsequent thereto. If a supplemental tax bill is received by Seller and delivered to Escrow Holder prior

to the Closing Date, Escrow Holder shall prorate the bill as specified in Paragraph 9.1.

9.2.2 Post-Closing. If no supplemental tax bill has been delivered to Escrow Holder by the Closing Date, the parties agree after the Close of Escrow to prorate the amount of the supplemental assessment relating to the times before and after the Close of Escrow. Within ten (10) working days after written demand by Buyer for Seller's pro rata share of such supplementary tax bill, Seller shall pay Buyer therefor. As a post-closing covenant, (i) Buyer agrees to hold Seller harmless from and indemnify it against any and all Property Taxes which may be imposed on the Property which relate to any period after the Close of Escrow (including any increased tax imposed because of increased assessed valuation resulting from the sale hereunder and relating to the period after the Close of Escrow), and (ii) Seller agrees to hold Buyer harmless from and indemnify it against any and all Property Taxes which may be imposed on the Property which relate to any period prior to the Close of Escrow.

9.3 Other Prorations. With respect to other prorations, the following shall apply:

9.3.1 Through Escrow. The following items shall also be prorated between Buyer and Seller as of the Close of Escrow: (i) utility payments, if any, for which purpose Seller agrees to use its best efforts to obtain final meter readings as of the Closing Date; (ii) sums payable under any contracts assumed by Buyer and remaining in force after the Close of Escrow; and (iii) amounts payable pursuant to any recorded restrictions.

9.3.2 Post-Closing. All amounts due on contracts and other debts pertaining to the Property which relate to the period prior to the Close of Escrow shall be paid by Seller, whether or not bills have been received prior to the Close of Escrow.

9.4 Post-Closing Adjustments. Buyer and Seller agree to re-prorate any of the above-referenced prorations if, after the Close of Escrow, more accurate or definitive information becomes available with respect thereto. The party receiving such information shall deliver written notice thereof to the other party within five (5) days of such receipt and, within five (5) days thereof, the parties shall re-prorate the affected matter and a party which is thereby shown to have received an excess credit shall to the extent of such excess immediately reimburse the other party.

9.5 Basis of Proration. All prorations called for in this Agreement shall be made on the basis of a thirty (30) day month.

9.6 Seller's Charges. Seller shall pay (i) all Documentary Transfer Taxes, (ii) the Title Policy premium in an amount that does not exceed the premium for a standard coverage policy, (iii) one-half of Escrow Holder's fee or termination charge, (iv) fees for beneficiaries' statements, and (v) usual seller's document-drafting and recording charges.

9.7 Buyer's Charges. Buyer shall pay (i) one-half of Escrow Holder's fee or termination charge, (ii) any costs associated with any Survey separately requested by Buyer, (iii) the additional Title Policy premium for a lender's policy above a standard policy, and (iv) usual buyer's document-drafting and recording charges.

ARTICLE 10. DISTRIBUTION OF FUNDS AND DOCUMENTS

10.1 Interest. Any sums delivered by Buyer to Escrow Holder pursuant to this Agreement shall, unless immediately released to Seller, be deposited by Escrow Holder into a daily money market account with such financial institution in which Escrow Holder maintains its trust accounts, to bear interest at the highest rate available for similar deposits from time to time. Interest earned on Buyer's deposits shall be credited to Buyer and shall apply to the Purchase Price.

10.2 Disbursements. All disbursements by Escrow Holder shall be made by checks of Escrow Holder or, at the request of the party to whom disbursement is made, by wire transfer.

10.3 Payment of Encumbrances. Upon the Close of Escrow, from funds to which Seller shall be entitled and from funds, if any, deposited by Seller with Escrow Holder, Escrow Holder shall pay to the appropriate obligees all encumbrances other than those permitted by Paragraph 8.1.2.

10.4 Return After Recording. Escrow Holder shall cause the County Recorder of Riverside County to mail Seller's Grant Deed (and each other instrument which is herein expressed to be, or by general usage is, recorded) after recordation, to the grantee, beneficiary or person (i) acquiring rights under said document, or (ii) for whose benefit the instrument was acquired.

10.5 Delivery of Instruments. Upon the Close of Escrow, Escrow Holder shall deliver by United States mail (or shall hold for personal pickup, if requested) each non-recorded instrument received by Escrow Holder, to the payee or person (i) acquiring rights under the instrument, or (ii) for whose benefit the instrument was acquired.

10.6 Delivery of Cash. Upon the Close of Escrow, Escrow Holder shall deliver by United States mail (or shall hold for personal pickup, if requested) (i) to Seller, or order, the balance of the cash portion of the Purchase Price to which Seller shall be entitled, and (ii) to Buyer, or order, any excess funds delivered to Escrow Holder by Buyer.

10.7 Reporting to Internal Revenue Service. Any returns, statements to reports required to be filed under §6045(e) of the Internal Revenue Code of 1986 (or any similar reports required by state or local law) or relating to the Property shall be filed by Escrow Holder. In no event shall this Agreement be construed so as to require that such returns, reports or statements be filed by Buyer, Buyer's counsel, Seller or Seller's counsel. Within five (5) days after the date Escrow Holder receives a written request from Seller and/or Buyer to do so, Escrow Holder shall provide evidence to Seller and/or Buyer that it has complied with the provisions of this Paragraph.

ARTICLE 11. POSSESSION; ENTRY BY BUYER

11.1 Limit on Escrow Holder's Responsibilities. Escrow Holder shall have no concern with, nor liability nor responsibility for, this Article.

11.2 Possession. Possession of the Property shall pass to Buyer at the Close of Escrow, free and clear of all interests of third parties.

11.3 Entry by Buyer. Buyer may, prior to the Close of Escrow, reasonably go upon the Property for purposes of inspecting, testing and the like, subject to the following terms and conditions:

11.3.1 Permits. Before undertaking any activity on the Property which requires a permit from the City and/or County (or other applicable governmental authority), Buyer or Buyer's agent shall obtain such permit and pay any fee or expense required to obtain or carry out the permit.

11.3.2 Indemnity. Buyer shall indemnify and hold Seller and the Property harmless from any claim, cost, lien, action or judgment (including, without limitation, Seller's attorney's fees and defense costs) (i) incurred for surveyors, engineers, architects and others implementing the purposes of this Paragraph, and (ii) for personal injury and property damage, and for claims for breach of contract, caused by Buyer or any of its employees, agents or independent contractors related to entry onto the Property pursuant to this Paragraph.

11.3.3 Prior to entering onto the Property or causing any physical tests or studies on the Property, Buyer

shall provide Seller with 24 hours written notice thereof. Seller or Seller's representatives shall have the right to accompany Buyer at, and be present at, any such physical inspection and/or testing or studies.

11.3.4 Before any entry onto the Property pursuant to this Paragraph 11.3, Buyer shall secure and maintain, at Buyer's sole cost, a policy of comprehensive public liability and property damage insurance with combined limits of at least \$1,000,000, naming Seller as an additional insured. A certificate of insurance evidencing the required policy shall be delivered by Buyer to Seller before entry onto the Property by Buyer.

ARTICLE 12. ACKNOWLEDGMENTS, WARRANTIES AND REPRESENTATIONS

12.1 Limit on Escrow Holder's Responsibilities. Escrow Holder shall have no concern with, nor liability nor responsibility for, this Article.

12.2 "As Is" Purchase. Subject to the representations, warranties and covenants of Seller expressly set forth in this Agreement, Buyer shall accept the Property in its "as is" condition or status as of the Effective Date.

12.3 Seller Not a Foreign Person. Seller warrants that no individual or entity which, under the terms of this Agreement, will transfer United States Real Property Interests, as defined in § 897(c) of the Internal Revenue Code, is a "foreign person" within the meaning of § 1445(f) of the Internal Revenue Code. Seller also warrants that Buyer as transferee will not be required to withhold tax pursuant to the tax laws of the state of California.

12.4 Brokerage Commissions. Seller has employed the services of Birkshire Realty Brokers pursuant to a separate written agreement between them, and Seller will pay to Birkshire Realty Brokers a brokerage commission of four percent of the Purchase Price, such commission to be paid out of escrow proceeds. Buyer has employed the services of Sam Gungee Realty pursuant to a separate written agreement between them, who will be paid a commission as follows: Buyer's Broker will share an equal one half of Seller's commission. Said Buyer's Broker's commission to be paid by Seller directly from escrow. Each party warrants to the other that other than as set forth above, the warranting party has incurred no obligation by reason of this Agreement or the transaction contemplated by this Agreement, for any real estate brokerage commission or finder's fee for which the other party would be liable. Each party will hold the other party free and harmless from and against any damage or expense the other party may incur by reason of the untruth as to the warranting party of the foregoing warranty, including expenses for attorneys' fees and court costs.

12.5 No Hazardous Materials. Seller represents and warrants that to the best of Seller's knowledge, except in compliance with applicable laws: (i) no Hazardous Materials have at any time in the past been used, generated, stored, transported, released, discharged or disposed of above, on beneath or in the vicinity of the Land or within the Improvements; (ii) no environmental condition on the Land is in violation of any applicable federal, state or local law, ordinance or regulation relating to Hazardous Materials; and (iii) there have been in the past no suits, claims or causes of action or other governmental or administrative proceedings against the Property, Seller, any affiliate or predecessor of Seller or any tenant, nor any settlement reached with any such party or parties alleging the presence, release or threatened release of any Hazardous Materials from or under any Property in violation of any Hazardous Materials Law. The Property Documents delivered pursuant to Paragraph 7.2 include all studies, reports or other information relating to Hazardous Materials or other environmental conditions on the Property, and Seller has no knowledge of any other or undisclosed Hazardous Materials information.

12.6 Conditions of Soils. Seller represents and warrants that to Seller's knowledge, except as set forth in any soils report provided by Seller to Buyer as part of the Property Documents, there exist no soils conditions or underground conditions which would make the construction of the Improvements unduly problematic or burdensome, or would require special remedial work to construct the Improvements.

12.7 Seller's Other Representations and Warranties. In addition to any other express agreements of Seller contained in this Agreement, the matters set forth in this Paragraph constitute representations and warranties by Seller which shall survive the close of this escrow and recordation of Seller's Grant Deed.

12.7.1 Agreements Affecting the Property. Except as reflected in the Property Documents actually delivered to Buyer pursuant to Paragraph 7.2, Buyer has no knowledge of any commitments to or agreements with any federal, state or local governmental agencies, public utilities, adjacent landowners or other parties affecting the Property which are not included in the Preliminary Report.

12.7.2 No Defaults. Seller is not in default with respect to any of its obligations or liabilities pertaining to the Property, nor to Seller's current actual knowledge are there any facts, circumstances, conditions or events which, but for notice or lapse of time or both, would constitute or result in any such default.

12.7.3 Condition of the Property. While Seller does not warrant the condition of the Property, Seller has no actual knowledge of any material conditions relating to the Property that are not reflected in the Property Documents actually delivered to Buyer pursuant to Paragraph 7.2.

12.7.4 No Actions or Violations. Seller has received no notice of any actions, proceedings or investigations pending or, to the best of Seller's knowledge, threatened against Seller or the Property, before or by any court, arbitrator, administrative agency or other governmental authority, which would affect the ability of Seller to convey the Property to Buyer or would otherwise affect the Property after the Closing. Seller has received no notices from governmental authorities pertaining to violations of law or governmental regulations with respect to the Property with which Seller has not fully complied or which Seller has not corrected. To the best of Seller's knowledge, Seller has in the past received no notices from governmental authorities pertaining to violations of law or governmental regulations with respect to the Property, and there are no currently existing violations of law or governmental regulations with respect to the Property.

12.7.5 No Condemnation Proceedings. Seller has received no notice of any pending or threatened eminent domain proceedings or other actions or regulatory proceedings filed by any federal, state or local governmental agency or authority, which will affect any portion of the Property after the Closing.

12.7.6 No Environmental Restrictions. Seller has no knowledge of any environmental conditions, including but not limited to presence of any endangered species, vegetation or wetlands areas, that would make any portion of the Property subject to development restrictions.

12.7.7 Free of Liens and Claims of Possession. Buyer will take the Property free from all claims, including any claims for rights of possession, any easements and/or rights of way for private or public uses, other than as set forth in the Review Documents.

12.7.8 Contracts. As of the Close of Escrow, there will be in place no contracts that will be an obligation affecting the Property subsequent to the Closing, except for contracts entered into in the ordinary course of business that are not chargeable against Buyer, and are terminable without cause on thirty (30) days' notice without penalty or cancellation fee.

12.7.9 Information Provided to Buyer. To Seller's actual knowledge, all Property Documents and other documents and information delivered to or inspected by Buyer pursuant to the terms of this Agreement are either original counterparts or complete and true copies of such documents, and Seller is aware of no

material inaccuracy in or material misrepresentation of the matters purported to be contained therein.

12.8 Authorization; No Breach. Buyer and Seller each represent and warrant to the other that each person executing this Agreement on behalf of such party is duly and validly authorized to do so, and that if such party is a partnership, corporation, limited liability company or trustee, that said partnership, corporation, limited liability company or trustee has full power and authority to enter into this Agreement and consummate the transactions contemplated hereunder. Neither the execution and delivery of this Agreement and the instruments and documents referenced herein, nor the consummation of the transactions contemplated herein conflict with or result in the material breach of any terms, conditions or provisions of any contract or other agreement or instrument to which Buyer or Seller is a party or which affects the Property.

12.9 Effect of Exchange Intermediary. Notwithstanding that the transaction contemplated hereby may be effected through a third party as a qualified IRC § 1031 intermediary, all obligations, representations, warranties and indemnities made by Buyer shall run to Seller, and all obligations, representations, warranties and indemnities made by Seller shall run to Buyer, despite the fact that an intermediary or other third party facilitating a party's tax-deferred exchange was substituted hereunder for that party.

ARTICLE 13. REMEDIES IN THE EVENT OF DEFAULT

13.1 Limit on Escrow Holder's Responsibilities. Escrow Holder shall have no concern with, nor liability nor responsibility for, this Article.

13.2 Default by Buyer. BY PLACING THEIR INITIALS TO THIS SECTION 13.2 BELOW, THE PARTIES AGREE THAT THE PURCHASE PRICE HAS BEEN DETERMINED NOT ONLY BY A CONSIDERATION OF THE VALUE OF THE PROPERTY PER SE BUT ALSO BY A CONSIDERATION OF THE VALUE OF THE VARIOUS COVENANTS, CONDITIONS AND WARRANTIES OF THIS AGREEMENT AS THEY RELATE TO THE PROPERTY. THE CONSIDERATION OF SUCH VALUES, SOMETIMES MEASURABLE IN RELATION TO KNOWN EXTERNAL STANDARDS AND SOMETIMES DETERMINED ONLY BY SUBJECTIVE BUSINESS JUDGMENTS OF THE PARTIES, ARE ALL INTERRELATED AND AFFECTED BY THE PARTIES' ULTIMATE AGREEMENT UPON THE PURCHASE PRICE. THE PARTIES HAVE DISCUSSED AND NEGOTIATED IN GOOD FAITH UPON THE QUESTION OF THE DAMAGES THAT WOULD BE SUFFERED BY SELLER IN THE EVENT BUYER BREACHES THIS AGREEMENT. THE PARTIES HAVE ENDEAVORED TO REASONABLY ESTIMATE SUCH DAMAGES AND THEY HEREBY AGREE THAT, BY REASON OF THE AFORESAID CONSIDERATIONS, (I) SUCH DAMAGES ARE AND WILL BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX, (II) LIQUIDATED DAMAGES IN THE AMOUNT OF THE DEPOSIT ACTUALLY DELIVERED BY BUYER ARE AND WILL BE REASONABLE, (III) IN THE EVENT OF SUCH BREACH, SELLER SHALL RECEIVE SUCH DEPOSIT AS LIQUIDATED DAMAGES, AND (IV) IN CONSIDERATION OF THE PAYMENT OF SUCH LIQUIDATED DAMAGES, SELLER SHALL BE DEEMED TO HAVE WAIVED ALL OTHER CLAIMS FOR DAMAGES, EXCEPT FOR CLAIMS FOR INDEMNITY ARISING UNDER PARAGRAPH 11.3.2.

Seller's Initials: _____

Buyer's Initials: _____

13.3 Default by Seller. If this transaction fails to close as a result of Seller's default, the Deposit and all interest thereon shall be returned to Buyer. In addition, Buyer shall be entitled to such remedies for

breach of contract as may be available at law as also set forth in Section 8.2.3, and in equity, including without limitation, the remedy of specific performance.

ARTICLE 14. ASSIGNMENT

14.1 Assignment. Except in connection with an Exchange, neither party shall assign to any person(s) or entities any or all of that party's rights in this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld; provided, however, that Buyer shall have the right without Seller's consent to assign this Agreement to any entity that controls, is controlled by, or is under common control with Buyer. Any permitted assignment may be exercised only by written assignment executed by the assigning party and accepted in writing by the assignee (which must, in such written acceptance, obligate itself to perform the assignor's obligations under this Agreement), and delivered to Escrow Holder and the other party prior to the Close of Escrow. Any assignment of a party's rights made or attempted without such written assignment and acceptance shall be void.

14.2 Effect of Approved Assignment by Buyer. In the event of any approved assignment by Buyer, the assignee will be and become: (i) the grantee of Seller's Grant Deed; (ii) the insured owner under the Title Policy; and (iii) the person(s) having the right or obligation to (a) deliver statements, (b) deliver documents, (c) give approvals, (d) waive conditions, or (e) make demands, all as may be permitted or required by this Agreement and not then already accomplished by Buyer or another approved assignee.

ARTICLE 15. DAMAGE OR CONDEMNATION

15.1 Damage or Condemnation. Risk of loss resulting from any condemnation or eminent domain proceeding which is commenced or has been threatened before the Closing, and risk of loss to the Property due to fire, flood or any other cause before the Closing, shall remain with Seller. If before the Closing the Property or any portion thereof should be materially damaged, or if the Property or any portion thereof should be subjected to a bona fide threat of condemnation or shall become the subject of any proceedings, judicial, administrative or otherwise, with respect to the taking by eminent domain or condemnation, then Buyer may terminate this Agreement and Escrow by written notice to Seller and Escrow Holder given within five (5) days after Buyer learns of the damage or taking. If the Closing Date is within the five-day period, then the Closing Date shall be extended to the next Business Day following the end of the five-day period. If no such election is made by Buyer, and in any event if the damage is not material, this Agreement shall remain in full force and effect and the transfer of the Property, less any interest taken by eminent domain or condemnation, shall be effected with no further adjustment (except as provided in this Paragraph), and upon the Closing, Seller shall assign, transfer and set over to Buyer all of the right, title and interest of Seller in and to any awards that have been or that may thereafter be made for such taking, and Seller shall assign, transfer and set over to Buyer any insurance proceeds that may thereafter be paid for such damage or destruction giving Buyer a credit against the Purchase Price at Closing for any deductible under such policies. For the purposes of this Paragraph, the phrases "material damage" and "materially damaged" means damage for which the cost of repair is reasonably expected to exceed five percent (5%) of the Purchase Price. If this Agreement terminates pursuant to this Paragraph, then the Deposits and all interest accrued thereon shall be refunded to Buyer.

ARTICLE 16. NOTICES

16.1 Time of Delivery; Addresses. Unless otherwise specifically provided herein, all notices, demands or

other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery, or by Federal Express (or similar reputable express delivery service), or by facsimile transmission with back-up copy mailed the same day, or as of the second business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Seller, to: Morgan Holding Company
234 Morgan Lane
Temecula, CA 92232
attn: Joseph Morgan
909 323-3233
909-232-2342

If to Buyer, to: 555 Field Point Associates, LLC
234 Main Street
Riverside, CA 92322
attn: Jane Tiller
909-232-1212
909-333-2222

If to Escrow, to: Nationwide Title Insurance Company

or to such other address or to such other person as any party shall designate to the others for such purpose in the manner set forth above.

ARTICLE 17. ESCROW HOLDER EXCULPATORY PROVISIONS

17.1 Neglect, Misconduct. Escrow Holder shall not be liable for any of its acts or omissions unless the same constitutes negligence or willful misconduct.

17.2 Information. Escrow Holder shall have no obligation to inform any party of any other transaction or of facts within Escrow Holder's knowledge, even though the same concerns the Property, provided such matters do not prevent Escrow Holder's compliance with this Agreement.

17.3 Form, Validity and Authority. Escrow Holder shall not be responsible for (i) the sufficiency or correctness as to form or the validity of any document deposited with Escrow Holder, (ii) the manner of execution of any such deposited document, unless such execution occurs in Escrow Holder's premises and under its supervision, or (iii) the identity, authority or rights of any person executing any document deposited with Escrow Holder unless under Escrow Holder's supervision or control.

17.4 Conflicting Instructions. Upon receipt of any conflicting instructions, Escrow Holder shall have the right to take no further action until otherwise directed, either by the parties' mutual written instructions or a final order or judgment of a court of competent jurisdiction.

17.5 Interpleader. Escrow Holder shall have the absolute right, at its election, to file an action in

interpleader requiring the parties to answer and litigate their several claims and rights among themselves, and Escrow Holder is authorized to deposit with the clerk of the court all documents and funds held in this Escrow. If such action is filed, the parties shall jointly and severally pay Escrow Holder's termination charges and costs and reasonable attorney's fees which Escrow Holder is required to expend or incur in the interpleader action, the amount thereof to be fixed and judgment therefor to be rendered by the court. Upon the filing of such action, Escrow Holder shall be and become fully released and discharged from all obligations to further perform any obligations imposed by this Agreement.

17.6 Miscellaneous. Recordation of any instruments delivered through this Escrow, if necessary or proper in the issuance of the Title Policy, is authorized. No examination or insurance as to the amount or payment of real or personal property taxes is required unless the real property tax is payable on or before the date of the Title Policy. If any party is seeking to obtain a loan secured by the Property, then, during the pendency of this escrow, Escrow Holder is authorized to furnish the lender, or anyone acting on its behalf, any information concerning this Escrow, including, but not limited to, a certified copy of this Agreement and any amendments thereto. If any party uses facsimile-transmitted signed documents, Escrow Holder is authorized to rely upon such documents as if they bore original signatures; provided, however, that facsimile-transmitted signed documents will not be accepted for recordation by the County Recorder.

17.7 Additional Instructions. Escrow Holder may request that Buyer and Seller sign additional instructions related to the Escrow created by this Agreement. Buyer and Seller agree to be reasonable in reviewing, commenting on, proposing changes to, approving and entering into any such additional instructions; provided, however, Seller, Buyer and Escrow Holder agree that in the event of any conflict or inconsistency between this Agreement and such additional instructions, the terms, conditions and provisions of this Agreement shall govern and control.

ARTICLE 18. GENERAL PROVISIONS

18.1 Attorneys' Fees. If either party commences litigation for the judicial interpretation, reformation, enforcement or rescission of this Agreement, the prevailing party will be entitled to a judgment against the other for an amount equal to reasonable attorneys' fees and court and other costs incurred. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover its costs shall not recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for the purposes of determining whether a party is entitled to recover its costs or attorneys' fees.

18.2 Gender, Number. Whenever the context requires, the use herein of (i) the neuter gender includes the masculine and the feminine, and (ii) the singular number includes the plural.

18.3 Business Days. If the (i) stated Closing Date (as extended, if applicable), or (ii) last day for performance of an act falls upon a day during which Escrow Holder is not open for business, the Closing Date (as extended, if applicable) or such last day, as the case may be, shall be the next following regular business day of Escrow Holder.

18.4 Time of the Essence. Time is of the essence of each covenant of this Agreement for which a date of performance is specified.

18.5 Survival of Provisions. The representations, warranties, agreements and indemnities set forth in this Agreement shall remain operative, shall be deemed made at the Close of Escrow, and shall survive the closing and the execution and delivery of Seller's Grant Deed and shall not be merged in Seller's Grant

Deed.

18.6 Authority of Signatories. Each individual signing this Agreement on behalf of a corporation, partnership, limited liability company or other entity warrants that he or she is duly authorized to sign and deliver this Agreement on behalf of the entity, either in accordance with a duly adopted resolution of the board of directors or management group of the entity, or in accordance with the bylaws, partnership agreement, operating agreement or other organizational documents of the entity, or as the entity's duly authorized agent with authority to bind the entity. Each individual signing also warrants that this Agreement is binding upon the entity in accordance with its terms.

18.7 Captions. Captions in this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement.

18.8 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

18.9 Entire Agreement. This Agreement contains the entire agreement between the parties relating to the transaction contemplated hereby and all prior or contemporaneous agreements (including without limitation any letter of intent signed by either or both parties), understandings, representations and statements, oral or written, are merged herein.

18.10 Modifications. No modification, waiver or discharge of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver or discharge is or may be sought.

18.11 Successors. All terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective administrators or executors, successors and assigns; nothing contained in this Paragraph shall affect the Article of this Agreement entitled "Assignment by Buyer".

18.12 Invalidity of Material Provision. If any material covenant, condition or provision herein contained is held to be invalid, void or unenforceable by a final judgment of any court of competent jurisdiction, this Agreement shall become rescinded unless the party benefitted by such covenant, condition or provision delivers to the other party and Escrow Holder, within five (5) days after the judgment becomes final, a written waiver of the covenant, condition or provision, in which case the remainder of this Agreement shall be enforceable.

18.13 Further Assurances. Each party to this Agreement, for itself and its successors and assigns, agrees to take such additional actions and execute such additional instruments as may be reasonably requested by Escrow Holder or the other party in order to give effect to the transaction contemplated hereby.

18.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one instrument.

This Agreement has been executed at Temecula, California, as of the date set forth at the beginning hereof. **SELLER:**

Morgan Holding Company

by:

BUYER:

by:

CONSENT OF ESCROW HOLDER

The undersigned Escrow Holder hereby agrees to (i) accept the foregoing Agreement, (ii) be Escrow Holder under the Agreement, and (iii) be bound by the Agreement in the performance of its duties as Escrow Holder; provided, however, the undersigned shall have no obligations, liability or responsibility under (a) this Consent or otherwise, unless and until the Agreement, fully signed by the parties, has been delivered to the undersigned, or (b) any amendment to said Agreement unless and until the same is accepted by the undersigned in writing. **Nationwide Title Insurance Company - Escrow Division**

_____ Date: _____

By:

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