
**MORTGAGE LOAN
PURCHASE AND SALE AGREEMENT**

BY AND BETWEEN

_____,
a _____,
AS SELLER,

AND

a _____,
AS PURCHASER,

DATED AS OF _____, 20__

**MORTGAGE LOAN
PURCHASE AND SALE AGREEMENT**

This MORTGAGE LOAN PURCHASE AND SALE AGREEMENT (the "Agreement") is entered into as of this ___ day of _____, 20___, by and between _____, a _____ ("Seller"), and _____, a California corporation ("Purchaser").

W I T N E S S E T H

WHEREAS, Purchaser has expressed to Seller its intent to purchase certain mortgage loans described in **Exhibit "A"** to this Agreement (the "Mortgage Loans").

WHEREAS, Seller desires to sell, and Purchaser desires to purchase, all of Seller's right, title and interest in, and to the Mortgage Loans on the terms and conditions as set forth below.

WHEREAS, Purchaser is a sophisticated and experienced purchaser of mortgage loans which has access to expert technical, financial and legal advice.

NOW THEREFORE, in consideration of the mutual promises herein set forth and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

**ARTICLE I
DEFINITIONS**

For purposes of this Agreement, the following terms shall have the meanings indicated below:

"Assignment Endorsement" shall mean an endorsement to the Title Policy to be issued in Purchaser's name by the original issuer of the Title Policy pursuant to which the lien status of the Mortgage shall be confirmed to Purchaser subject only to usual and customary title exceptions.

"Assignment of Mortgage" means an assignment of the Mortgage for the Mortgage Loans, as applicable.

"Borrower" shall mean with respect to the Mortgage Loans, the current and unreleased obligor(s) on the Mortgage Note and any other evidence of indebtedness, including, without limitation, any and all makers, guarantors, sureties or other persons or entities liable on the Mortgage Loans.

"Claim" shall mean any harm, liability, judgment, damage, claim, demand, cost, expense (including reasonable legal fees and expenses) or loss.

"Closing" shall mean the payment of the Purchase Price and delivery of the documents and instruments as set forth in **Section 4.2** and **Section 4.3** following the fulfillment or waiver of certain conditions precedent to closing specified in **Article VIII**.

"Closing Date" shall mean _____, 20___, or such other date and time as may be mutually acceptable to both Seller and Purchaser.

"Closing Procedure Letter" shall mean that certain letter, setting forth closing procedures to be followed by Escrow Agent, addressed to Escrow Agent by and among Seller, Purchaser and Escrow Agent, in the form of **Exhibit "D"** attached hereto and made a part hereof.

"Collateral Property" shall mean, with regard to the Mortgage Loans, a mortgage securing each Mortgage Note evidencing such Mortgage Loan and each and every original collateral document delivered to Seller regarding such Mortgage Loans.

"Cut-Off Date" shall mean the date as of which all activity as to the principal balances, payment of interest and escrow balances of the Mortgage Loans under this Agreement shall be deemed to have ceased for

Seller's benefit, and to have commenced for Purchaser's benefit. The parties have fixed last day of the month prior to the month in which the Closing Date occurs to be the Cut-Off Date, which date may be changed in writing by mutual agreement of both parties, from which time the Mortgage Loans is deemed to be held in trust pending delivery to Purchaser pursuant to this Agreement.

"Escrow Agent" shall mean _____.

"Escrow Account Fund" shall mean the funds, if any, Seller is collecting and escrowing, or has collected and escrowed, for the purposes of paying the annual payments of real estate taxes, hazard insurance premiums, private mortgage insurance premiums, maintenance fees, homeowner's association dues or for any other purposes relating to the Mortgage Loans which Seller is holding in escrow.

"Goodbye Letter" shall mean a letter, in the form of **Exhibit "E"** attached hereto, from Seller to Borrower informing Borrower that Seller has transferred Borrower's Mortgage Loans to Purchaser and that Seller shall no longer have any responsibility whatsoever for servicing the Mortgage Loans.

"Loan Files" shall mean the Mortgage Loan Documents and all other original documents in the possession of Seller relating to the Mortgage Loans, including, without limitation, legal opinions, appraisals, insurance certificates, borrower estoppel certifications, subordination agreements, leases, ground leases, financial and/or operating statements, credit reports, lender's title insurance policies, engineering reports, soils reports, environmental audit reports, architect's certificates, participation agreements, servicing agreements and all other documentation and correspondence in Seller's possession or control relating to the Mortgage Loans.

"Mortgages" shall mean the mortgage or deed of trust securing the Mortgage Notes.

"Mortgaged Properties" shall mean the real property identified as security in the Mortgage.

"Mortgage Loans" shall mean the Mortgage Loans evidenced by the Mortgage Notes.

"Mortgage Loan Documents" shall mean, with respect to the Mortgage Loans, all documents, agreements and instruments in Seller's possession or control relating to such Mortgage Loans including, without limitation, the Mortgage Note relating thereto and the Collateral Property relating thereto, all credit applications, financial statements, credit reports and correspondence relating to the Mortgage Loans.

"Mortgage Note" shall mean with respect to the Mortgage Loans: the promissory note.

"Purchase Price" shall have the meaning given to that term in **Section 2.2**.

"Title Policy" shall mean a valid title insurance policy, insuring the Mortgage's priority lien subject only to usual and customary title exceptions acceptable to Purchaser issued by a title insurance company that is currently in business and which at the Closing will be endorsed by the applicable title insurance company to depict Purchaser as the insured party under such policy.

ARTICLE II PURCHASE AND SALE OF THE MORTGAGE LOANS

Section 2.1 Purchase and Sale; Release of Servicing Rights. Subject to the terms and provisions set forth in this Agreement, on the Closing Date, Purchaser shall purchase the right, title and interest to the Mortgage Loans from Seller and Seller shall sell, transfer, assign and convey such Mortgage Loans, together with all of Seller's rights, title and interest in the Collateral Property, to Purchaser. The Mortgage Loans shall be sold to Purchaser with all servicing rights being released to Purchaser. Within five (5) days following the Closing Date, Seller shall send a Goodbye Letter to the Borrower. Any and all advances made by Seller or a servicer on a Borrower's behalf which have not been repaid by Borrower on or before the Closing Date shall be the responsibility of Seller; provided, however, if Purchaser collects any repayments of any such advances (that have been specifically identified as such by Borrower) after the Closing Date, Purchaser shall promptly forward such amounts to Seller. Notwithstanding the foregoing, Purchaser shall not undertake any responsibility to collect any such amounts from Borrower.

Section 2.2 Purchase Price for Mortgage Loans. The purchase price for the Mortgage Loans (the "Purchase Price") shall be equal to _____ percent (____%) of the unpaid principal balance as of the Cut-Off Date, as set forth on Exhibit "A", plus accrued but unpaid interest up to the Closing Date.

Section 2.3 Payment of the Purchase Price for the Mortgage Loans. The Purchase Price less the amount of the Escrow Account Fund shall be remitted to the Escrow Agent in accordance with wire transfer instructions to be provided to Purchaser by the Escrow Agent and shall be deposited on the Closing Date in immediately available federal funds.

Section 2.4 Application of Escrow Account Funds. Any and all amounts held in the Escrow Account Fund relating to the Mortgage Loans as of the Closing Date will, upon Closing, be assigned to the Purchaser. The balance (positive or negative) of the Escrow Account Fund shall be set forth on the Trial Balance Information required to be delivered by Seller to Purchaser pursuant to **Section 8.2(c)**. At the Closing, to effectuate this assignment, the Purchaser will receive a credit toward the Purchase Price equivalent to the amount of the Escrow Account Fund held by Seller as of the Closing Date. For all purposes, the credit to Purchaser shall be deemed a transfer of the Escrow Account Fund by Seller to Purchaser.

**ARTICLE III
OPENING OF ESCROW AND DEPOSIT**

Section 3.1 Escrow. Concurrently with the execution of this Agreement by Purchaser and Seller, the parties shall submit a copy of this Agreement and the Closing Procedure Letter to Escrow Agent for its execution.

Section 3.2 Deposit. Purchaser shall deposit with Escrow Agent a cashier's check or other immediately available funds in the amount equal to ten percent (10%) of the Purchase Price (the "Deposit") simultaneously with the execution of this Agreement. The Deposit shall be held in escrow by the Escrow Agent. If this transaction closes as provided in this Agreement, the entire amount of the Deposit plus any accrued interest shall be applied to the payment of the Purchase Price. The entire amount of the Deposit shall be returned immediately to Purchaser if Seller does not accept Purchaser's offer and declines to execute this Agreement or in the event of the failure of any of the conditions precedent set forth in Article VIII or (b) Seller shall be unable or fail to perform its obligations under this Agreement. In the event of a breach of this Agreement by Purchaser and provided that Seller is not then in breach of this Agreement, the Deposit shall be applied as provided in Section 3.3 below.

Section 3.3 LIQUIDATED DAMAGES. IF THE TRANSACTION DOES NOT CLOSE SOLELY DUE TO A BREACH BY PURCHASER UNDER THIS AGREEMENT, SELLER SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT IN WRITING IMMEDIATELY AND WITHOUT FURTHER OBLIGATION TO PURCHASER, AND THE TITLE COMPANY SHALL IMMEDIATELY DISBURSE THE DEPOSIT TO SELLER. SELLER SHALL RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES AND AS SELLER'S SOLE REMEDY (EXCEPT AS PROVIDED BELOW). THE PARTIES AGREE THAT SELLER'S ACTUAL DAMAGES AS A RESULT OF PURCHASER'S BREACH UNDER THIS AGREEMENT WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE, AND THE DEPOSIT IS THE BEST ESTIMATE OF THE AMOUNT OF DAMAGES SELLER WOULD SUFFER AS A RESULT OF SUCH BREACH; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT LIMIT SELLER'S RIGHT TO OBTAIN REIMBURSEMENT FOR ATTORNEYS' FEES AND COSTS RELATING TO COLLECTION OF THE DEPOSIT. THE PAYMENT OF THE DEPOSIT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. THE PARTIES WITNESS THEIR AGREEMENT TO THIS LIQUIDATED DAMAGES PROVISION BY INITIALING THIS SECTION:

Seller _____ Purchaser _____

ARTICLE IV

CLOSING

Section 4.1 Closing. The Closing shall be held on the Closing Date at 5:00 p.m. (Pacific Standard Time), through an escrow with Escrow Agent, or such other date and time as the parties may mutually agree in writing before the Closing Date.

Section 4.2 Seller's Documents. Seller agrees to execute, deliver and/or provide to Purchaser the following at the Closing:

- (a) The original Mortgage Notes endorsed, "Pay to the order of the Purchaser" and signed in the name of Seller by an authorized signatory, in the form of **Exhibit "B"** attached hereto, along with all intervening original assignment endorsements thereof;
- (b) The original Mortgages with all intervening original assignments thereof, with evidence of recording thereon;
- (c) Original Assignment of Mortgages;
- (d) An original (to the extent an original is available, or a copy if no original is available) of each other Mortgage Loan Document;
- (e) The original Loan Files;
- (f) All original UCC-1 Financing Statements with all intervening assignments thereof, if any; any such UCC-1 Financing Statement shall include a UCC-2 or UCC-3 Assignment with Purchaser's name shown thereon, executed by Seller, which financing statement shall be in form and substance acceptable for filing;
- (g) The original Title Policy, and if Purchaser elects, the Assignment Endorsement (or an assurance letter from the issuing title company stating that they are unconditionally prepared to issue the Assignment Endorsement) and, to the extent the Loan Files contain any casualty insurance policy(ies), credit life or disability insurance policy(ies), private insurance guarantor policy(ies), or any other similar types of insurance coverage documents (the "Policies"), all such Policies held by Seller;
- (h) A Bill of Sale, without recourse, executed by Seller, an unexecuted copy of which is attached hereto as **Exhibit "C"** (the "Bill of Sale"); and
- (i) Seller's share of the closing costs and other expenses to be paid by Seller.

Section 4.3 Purchaser's Closing Items. Purchaser agrees to execute, deliver and/or provide to the Escrow Agent on or before the Closing Date all amounts due in satisfaction of the Purchase Price under **Section 2.2**.

Section 4.4 Transfer and Recordation Taxes. Purchaser and Seller shall each pay its own costs which may be incurred in connection with the transaction contemplated by this Agreement. Purchaser shall pay all transfer, filing and recording fees, and any state or county documentary taxes, if any, with respect to the filing or recording of any document or instrument to be executed and delivered in connection with the transfer of the Mortgage Loans. Seller and Purchaser shall share equally in the cost of the escrow fees.

Section 4.5 Closing Instructions. At Closing, Escrow Agent is authorized and directed to comply with the closing instructions set forth in the Closing Procedure Letter.

ARTICLE V [This Section Intentionally Deleted]

**ARTICLE VI
REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Section 6.1 Representations and Warranties by Purchaser. Each of the following representations and warranties by Purchaser is true and correct as of the date hereof and shall be true and correct on the Closing Date:

(a) **Authority; Binding on Purchaser; Enforceability.** Purchaser is a corporation duly formed and validly existing and in good standing under the laws of the State of California. Purchaser has taken all necessary action to authorize its execution, delivery and performance of this Agreement and has the power and authority to execute, deliver and perform this Agreement and all related documents and all the transactions contemplated hereby, including, but not limited to, the authority to purchase and acquire the Mortgage Loans in accordance with this Agreement and, assuming due authorization, execution and delivery by each other party hereto, this Agreement and all the obligations of Purchaser hereunder are the legal, valid and binding obligations of Purchaser enforceable in accordance with the terms of this Agreement, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). Upon Seller's request, Purchaser shall provide evidence of Purchaser's authority to Seller.

(b) **Conflict with Existing Laws or Contracts.** The execution and delivery of this Agreement and the performance of its obligations hereunder by Purchaser will not (i) conflict with any provision of any law or regulation to which Purchaser is subject, (ii) conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which Purchaser is a party or by which it is bound or any order or decree applicable to Purchaser, or (iii) result in the creation or imposition of any lien on any of its assets or property which would materially and adversely affect the ability of Purchaser to carry out the terms of this Agreement; and Purchaser has obtained any consent, approval, authorization or order of any court or governmental agency or body required for the execution, delivery and performance by Purchaser of this Agreement.

(c) **Legal Action Against Purchaser.** There are no judgments, orders, or decrees of any kind against Purchaser unpaid or unsatisfied nor any legal actions, suits or other legal or administrative proceedings pending against Purchaser in any court or by or before any other governmental agency or instrumentality which would materially affect the ability of Purchaser to carry out the transaction contemplated by this Agreement.

(d) **Bankruptcy or Debt of Purchaser; Financial Condition.** Purchaser is not in the hands of a receiver and has not committed an act of bankruptcy or insolvency and Purchaser's financial condition is, and shall at all times through Close of Escrow remain, such as to enable Purchaser to perform all of its monetary obligations under this Agreement. Purchaser has sufficient funds available to consummate the transactions contemplated by this Agreement.

(e) **Decision to Purchase.** Purchaser is a sophisticated investor and its decision to purchase the Mortgage Loans is based upon its own independent expert evaluations of the Mortgage Loan Documents and other materials deemed relevant by Purchaser and its agents. Purchaser has not relied, in entering into this Agreement, upon any oral or written information from Seller, or any of its employees, agents or representatives, except as otherwise specifically provided herein. Purchaser further acknowledges that no employee or representative of Seller has been authorized to make, and that Purchaser has not relied upon, any statements or representations other than those specifically contained in this Agreement. By proceeding with Closing, Purchaser shall be deemed to have acknowledged to Seller that Purchaser has reviewed the Mortgage Loans and the related Loan Files and that Purchaser is thoroughly acquainted and satisfied with all aspects thereof, and is purchasing the Mortgage Loans "AS-IS", "WHERE-IS" without any covenants, warranties, representations or agreements as to the Mortgage Loans except as set forth in this Agreement.

Section 6.2. Broker. Purchaser is responsible for any commission earned or claimed by any broker employed by Purchaser.

**ARTICLE VII
REPRESENTATIONS AND WARRANTIES OF SELLER**

Section 7.1 Representations and Warranties by Seller. Each of the following representations and warranties by Seller is true and correct as of the date hereof and shall be true and correct on the Closing Date:

(a) **Authority; Binding on Seller; Enforceability.** Seller is a corporation duly formed and validly existing and in good standing under the laws of the State of _____. Seller has taken all necessary action to authorize its execution, delivery and performance of this Agreement and has the power and authority to execute, deliver and perform this Agreement and all related documents and all the transactions contemplated hereby, including, but not limited to, the authority to sell, assign and transfer the Mortgage Loans in accordance with this Agreement and, assuming due authorization, execution and delivery by each other party hereto, this Agreement and all the obligations of Seller hereunder are the legal, valid and binding obligations of Seller enforceable in accordance with the terms of this Agreement, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). Upon Purchaser's request, Seller shall provide evidence of Seller's authority to Purchaser.

(b) **Representations and Warranties by Seller as to the Mortgage Loans.** Seller hereby represents and warrants to Purchaser with respect to the Mortgage Loans as of the Closing Date:

(1) Ownership. Seller is the sole legal and beneficial owner and holder of the Mortgage Loans free and clear of any and all liens and encumbrances affecting Seller's interest. At the Closing, Purchaser will acquire all of Seller's legal and beneficial interest in the Mortgage Loans free and clear of any and all liens, charges, and security interests, affecting Seller's interest.

(2) Trial Balance. The Trial Balance Information provided by Seller pursuant to **Section 8.2(c)** shall be true, correct and complete as of the Closing Date.

(3) No Defense by Mortgagor. Seller has taken no action that would result in the Mortgage Loans being subject to any right of rescission, set-off, abatement, diminution, counterclaim or defense that materially affects the ability of Purchaser or its assigns to enforce the provisions of the Mortgages or realize against the Collateral Property that is the subject of such Mortgage the intended benefits of such Mortgage, and Seller has received no written notice of the same with respect to the Mortgage Loans.

(4) Enforceability. The Mortgage Note and the related Mortgage are the legal, valid and binding obligation of the Borrower thereof and are enforceable in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and except for the exceptions and limitations set forth in the Borrowers' legal opinions.

(5) No Modification. Except as set forth in the Loan Files, Seller has not modified the Mortgage or related Mortgage Notes in any material respect, Seller has not entered into a modification or agreement that is binding upon and enforceable against Purchaser which would modify in a material respect any Mortgages or related Mortgage Notes, and Seller has not satisfied (except relating to payments under the Mortgage Notes in the ordinary course), canceled or subordinated the Mortgages or Mortgage Notes in whole or in part or released all or any material portion of the Mortgaged Property from the lien of the Mortgages, or executed any instrument of release, cancellation or satisfaction.

(6) Title Insurance Policy. The Mortgage Loans have a valid Title Policy, insuring the Mortgages their respective lien positions, subject only to usual and customary title exceptions.

(7) No Satisfaction of Mortgage. The Mortgages have not been satisfied, cancelled, subordinated or rescinded, in whole or in part, and the Mortgaged Properties has not been released

from the lien of the Mortgage, in whole or in part, nor has any instrument been executed that would effect any such release, cancellation, subordination or rescission.

Section 7.2 Loans Sold "As Is." THE LOANS ARE SOLD "AS IS" AND "WITH ALL FAULTS," WITHOUT ANY REPRESENTATION, WARRANTY OR RECOURSE WHATSOEVER AS TO EITHER COLLECTIBILITY, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. SELLER SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE MORTGAGE LOANS, THE STRATIFICATION OR PACKAGING OF THE MORTGAGE LOANS, THE COLLATERAL PROPERTY OR THE LOAN FILES.

Section 7.3 No Warranties or Representations With Regard to Due Diligence Data. Seller makes no warranties or representation of any kind as to the completeness or accuracy of any information provided by Seller with respect to any Mortgage Loan. As an example and not by way of limitation, some Mortgage Documents may be missing forms or notices, or may contain incomplete or inaccurate forms or notices, that may be required by one or more federal or state consumer protection statutes.

Section 7.4 Purchaser's Waiver of Cause of Action. Purchaser hereby waives any right or cause of action it might now or in the future have against the Seller as a result of its purchase of the Mortgage Loan (s) subject to this Agreement; provided, however, that this waiver does not include any action taken as a result of Seller's failure to perform under the terms of this Agreement.

Section 7.5 Intervening or Missing Assignments. Purchaser acknowledges and agrees that Seller shall have no obligation to secure or obtain any missing intervening assignment or any assignment to Seller that is not contained in the Mortgage Loan Documents or among the Loan Files. Purchaser shall have the sole responsibility and expense of securing any intervening assignment or any assignment to Seller that may be missing from the Loan Files from the appropriate source.

ARTICLE VIII CONDITIONS PRECEDENT TO CLOSING

The respective obligations of Purchaser and Seller to complete the purchase and sale of the Mortgage Loans pursuant to this Agreement is subject to the fulfillment on or prior to Closing Date of each of the following additional conditions to be fulfilled by the other, unless the same is specifically waived in writing by the party for whose benefit the same is to be fulfilled:

Section 8.1 Conditions for the Benefit of Seller.

(a) **Performance of Covenants.** Purchaser shall have performed all of its covenants and agreements contained herein which are required to be performed by it on or prior to the Closing Date.

(b) **Representations and Warranties.** All representations and warranties of Purchaser in **Section 6.1** shall be true in all material respects at and as if made on the Closing Date.

Section 8.2 Conditions for the Benefit of Purchaser.

(a) **Performance of Covenants.** Seller shall have performed all of its covenants and agreements contained herein which are required to be performed by it on or prior to the Closing Date.

(b) **Representations and Warranties.** All representations and warranties of Seller, if any, contained in this Agreement shall be true in all material respects at and as if made on the Closing Date.

(c) **Preliminary Trial Balances.** Seller shall have sent to Purchaser via facsimile at least forty-eight (48) hours prior to the Closing Date, (i) the then current principal balance of each Mortgage Loan, (ii) the amount of accrued and unpaid interest thereon, (iii) the interest rate applicable to each Mortgage Loan, (iv) the balance of each Escrow Account Fund, (v) the amount of any advances made by Seller or servicer on the Borrower's behalf which has not been repaid as of the Closing Date, (vi) the "paid to" date, (vii) the amount of per diem interest accruing, and (viii) the amount of the regular monthly principal and interest installment payment. The foregoing information is hereinafter collectively referred to as the "Trial Balance Information" and Purchaser shall not have sent written notice to Seller disapproving the Trial Balance Information.

(d) **Title Policy and Assignment Endorsement to Title Policy.** Seller shall have provided to Purchaser the Title Policy, and Buyer, at Buyer's sole cost and expense, shall have the right to obtain the Assignment Endorsement (or an assurance letter from the issuing title company stating that they are unconditionally prepared to issue the Assignment Endorsement and) to the Title Policy, and if the issuer of the Title Policy has gone out of business or is insolvent or is in receivership.

ARTICLE IX ASSIGNMENT OF RIGHTS TO THIRD PARTIES

Purchaser shall not have the right, prior to the Closing Date, to assign its rights under this Agreement to any other party without the prior written consent of Seller, which will not be unreasonably withheld.

ARTICLE X DEFAULT

Section 10.1 Purchaser's Default. In the event Purchaser shall default in its obligations to purchase the Mortgage Loans, materially breach a representation or warranty or covenant hereunder or otherwise fail to perform any material obligation under this Agreement prior to the Closing hereunder, Seller shall be immediately released from its obligation to sell the Mortgage Loans to Purchaser and Seller's sole and exclusive remedy shall be to cancel this Agreement by giving written notice of cancellation to Purchaser and Escrow Agent and retain the Deposit pursuant to Section 3.3.

Section 10.2 Seller's Default Prior to the Closing. In the event Seller shall default in its obligations to sell the Mortgage Loans to Purchaser, then Purchaser shall have the right to, as its sole and exclusive remedy to terminate this Agreement by giving written notice thereof to Seller and Escrow Agent, in which case Escrow Agent shall refund to Purchaser the Deposit.

ARTICLE XI SUBSEQUENT DOCUMENTATION AND OBLIGATIONS

Section 11.1 Further Assurances. At any time, and from time to time hereafter, upon the reasonable request of Purchaser, and without payment of further consideration to Seller, other than reimbursement for Seller's out-of-pocket expenses, Seller will do, execute, acknowledge and deliver, and will cause to be done, executed, acknowledged and delivered, all such further assignments, transfers, conveyances and assurances as may be required in order to better assign, transfer, grant, convey, assure and confirm to Purchaser, or to collect and reduce to possession, the Mortgage Loans as provided for herein.

Section 11.2 Seller Covenants. Seller covenants and agrees as follows:

(a) Should Seller and/or any account servicing agent servicing the Mortgage Loans on behalf of Seller (the "Servicing Agent") receive any notice or other information concerning the Mortgage Loans purchased by Purchaser after the Closing Date, Seller and/or the Servicing Agent shall promptly forward such notice or other information to Purchaser.

(b) Seller agrees that Seller will not, on or before the Closing Date, modify, cancel, extend or otherwise change in any manner any of the terms, covenants, or conditions of any Mortgage Note or

Collateral Property nor enter into any other agreements affecting the Mortgage Loans without the prior written consent of Purchaser.

(c) Should a Mortgage Note relating to a Mortgage Loan contain provisions for the adjustment of the interest rate and/or installment payments payable thereunder which require notice from the Seller in order to be effective, Seller shall, on or before the Closing Date notify, in writing, each Borrower under the Mortgage Loans of any such adjustment scheduled to occur on or before the Closing Date and Seller shall deliver to Purchaser, at the Closing, evidence that Seller provided such notifications in connection with the Mortgage Loans.

**ARTICLE XII
NOTICES**

Unless otherwise provided for herein, all notices and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given (a) when delivered, if sent by registered or certified mail (return receipt requested), (b) when delivered, if delivered personally, (c) on the date of a facsimile, if (i) the transmittal form showing a successful transmittal is retained by the sender, and (ii) the facsimile communication is followed by mailing a copy thereof to the addressee of the facsimile in accordance with this paragraph, in each case to the parties at the following addresses (or at such other addresses as shall be specified by like notice):

(a) If to Seller: _____

Attention:
Telephone:
Facsimile:

(b) If to Purchaser: _____

Attention:
Telephone:
Facsimile:

(c) If to Escrow Agent: _____

Attention:
Telephone:
Facsimile

The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication within any corporation or firm to the persons designated to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

**ARTICLE XIII
MISCELLANEOUS PROVISIONS**

Section 13.1 Severability. Each part of this Agreement is intended to be severable. If any term, covenant, condition or provision hereof is unlawful, invalid, or unenforceable for any reason whatsoever, and such illegality, invalidity, or unenforceability does not affect the remaining parts of this Agreement, then all such remaining parts hereof shall be valid and enforceable and have full force and effect as if the invalid or unenforceable part had not been included.

Section 13.2 Rights Cumulative; Waivers. The rights of each of the parties under this Agreement are cumulative and may be exercised as often as any party considers appropriate. The rights of each of the parties hereunder shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing. Failure to exercise or any delay in exercising any of such rights also shall not operate as a waiver or variation of that or any other such right. Defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right. No act or course of conduct or negotiation on the part of any party shall in any way preclude such party from exercising any such right or constitute a suspension or any variation of any such right.

Section 13.3 Headings. The headings contained in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

Section 13.4 Construction. Unless the context otherwise requires, singular nouns and pronouns, when used herein, shall be deemed to include the plural of such noun or pronoun and pronouns of one gender shall be deemed to include the equivalent pronoun of the other gender.

Section 13.5 Assignment. Subject to **Article IX**, this Agreement and the terms, covenants, conditions, provisions, obligations, undertakings, rights and benefits hereof, including the Exhibits hereto, shall be binding upon, and shall inure to the benefit of, the undersigned parties and their respective heirs, executors, administrators, representatives, successors and assigns.

Section 13.6 Prior Understandings; Integrated Agreement. This Agreement supersedes any and all prior discussions and agreements between Seller and Purchaser with respect to the purchase of the Mortgage Loans and other matters contained herein, and this Agreement contains the sole, final and complete expression and understanding between Seller and Purchaser with respect to the transactions contemplated herein. This Agreement shall not be altered or modified except by a subsequent writing, signed by Purchaser and Seller.

Section 13.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument, and either party hereto may execute this Agreement by signing any such counterpart.

Section 13.8 Survival. Each and every covenant hereinabove made by Purchaser or Seller shall survive the Closing and shall not merge into any document executed as part of the Closing, but instead shall be independently enforceable except to the extent expressly limited in this Agreement. The representations and warranties set forth herein shall survive in accordance with Section 10.3.

Section 13.9 Governing Law. This Agreement shall be construed, and the rights and obligations of Seller and Purchaser hereunder determined, in accordance with the laws of the State of New Mexico.

Section 13.10 Third Party Beneficiaries. No person, firm or other entity other than the parties hereto shall have any rights or claims under this Agreement.

Section 13.11. Indemnification Regarding Brokers. If any person shall assert a Claim to a finder's fee, brokerage commission or other compensation on account of alleged employment as a finder or broker in connection with the transactions contemplated by this Agreement, the party under whom the finder or broker is claiming shall indemnify, defend and hold the other party hereto harmless from and against all costs, expenses and liabilities incurred in connection with such Claim including, without limitation, attorneys' fees and costs in defending against such Claim.

Section 13.12. Attorneys' Fees. If either party brings any suit or other proceeding with respect to the subject matter or the enforcement of this Agreement, the prevailing party (as determined by the court, agency or other authority before which such suit or proceeding is commenced), in addition to such other relief as may be awarded, shall be entitled to recover reasonable attorneys' fees, expenses and costs of investigation actually incurred. This Section shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

PURCHASER:

_____,
a California corporation

By: _____
Name: _____
Title: _____

SELLER:

_____,
a _____

By: _____
Name: _____
Title: _____

ESCROW AGENT:

_____ hereby acknowledges receipt of this Agreement and accepts the escrow instructions contained herein this ____ day of _____, 20__.

By: _____
Title: _____

[Signature Page of Commercial Mortgage Loans
Purchase and Sale Agreement
Dated as of _____, 20__]

EXHIBIT "A"
DESCRIPTION OF MORTGAGE LOANS

[To Be Attached]

EXHIBIT "B"
FORM OF ALLONGE ENDORSEMENT TO MORTGAGE NOTE

ALLONGE

The endorsement in this Allonge shall be effective upon attachment to that certain ___ Note dated ___, in the original amount of ___ and No/100 Dollars (\$___⁰⁰), executed by ___, payable to ___.

Pay to the order of _____.

_____,
a _____

By: _____

Name:

Title:

EXHIBIT "C"
FORM OF BILL OF SALE

Bill of Sale

BILL OF SALE, dated _____, 20__ from _____ ("Seller"), to
_____ ("Purchaser").

WHEREAS, pursuant to the Commercial Mortgage Loans Purchase and Sale Agreement dated _____, 20__, by and between the Purchaser and the Seller (the "Agreement"), the Seller agreed to grant, sell, assign, convey, transfer and deliver to the Purchaser, without recourse, the mortgage loans set forth on Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Mortgage Loans").

NOW, THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound hereby, the Seller by these presents does hereby sell, convey, transfer, assign, set over to, and vest in, without recourse, the Purchaser, its successors and assigns, all of the Seller's right, title and interest, legal or equitable, in and to the Mortgage Loans, servicing released. The terms of this Bill of Sale shall not supersede the terms of the Agreement.

IN WITNESS WHEREOF, the Seller has caused this Bill of Sale to be executed as of the date first written above.

_____,
a _____

By: _____
Name:
Title:

EXHIBIT "D"
FORM OF CLOSING PROCEDURE LETTER

[To Be Attached]

EXHIBIT "E"
FORM OF GOODBYE LETTER TO BORROWER

[Date]

[Borrower]

[Address]

[Address]

Re: Loan No. _____

Dear Mortgagor(s):

Your loan was recently transferred to _____ ("____") effective _____, 20__ and will no longer be serviced by _____. To the extent payments have already been made to _____, the payment will be forwarded to _____ for processing.

The transfer of the servicing and the sale and transfer of your mortgage has been handled as part of normal business transactions. This type of transaction occurs frequently in the mortgage banking industry, and in no way affect the terms or conditions of your mortgage other than the terms directly related to the servicing of your loan, nor does the transaction indicate our unwillingness to service your loan. Until you are provided with further written information, you should send their payments to _____. You may contact _____ at the telephone number noted below. Send written inquiries to the correspondence address:

PAYMENTS:

CORRESPONDENCE:

We will provide you with a mortgage statement for the period in which we owned your loan. _____ will provide you with a mortgage statement for the period in which it owns your loan. You will need to combine the information shown on the statements to calculate the proper tax deduction when filing your tax return for 20__.

It has been our pleasure to serve you. If you have any questions, please contact our Customer Service Department at the number noted above.