



*First American
Fund Control*

First American Fund Control, Inc.
("Escrow Holder")
P.O. Box 25619
Santa Ana, CA 92799
Telephone (866) 536-0179
FAX (866) 536-0177

FAFC Escrow No.: _____

(Revised 1/2008)

HOLDING ESCROW AGREEMENT
[Holding – Interim Payments]

THIS HOLDING ESCROW AGREEMENT (this "**Agreement**") is entered into and effective as of _____, 20____ by and among FIRST AMERICAN FUND CONTROL, INC., a California corporation ("**Escrow Holder**"); "**Buyer**" (identified on the signature page of this Agreement); and "**Seller**" (identified on the signature page of this Agreement).

RECITALS

1. An Addendum is attached hereto (the "**Addendum**") and incorporated herein by reference. Defined terms not defined in the body of this Agreement shall have the definitions set forth in the Addendum.
2. Buyer and Seller have entered into a contract of purchase and sale (the "**Purchase Contract**") pursuant to which Buyer intends to purchase (or has purchased) from Seller that real property identified in the Addendum (the "**New Property**"). This Agreement does not alter the provisions of the Purchase Contract.
3. This Agreement is intended to establish a procedure, pursuant to which certain payments (the "**Payments**") shall be disbursed for a limited period of time as contemplated by the Purchase Contract. Each of the Payments is specifically identified in the Addendum, and there are no Payments other than those specifically identified in the Addendum. Seller shall deposit with Escrow Holder funds in the amount specified in the Addendum, which shall be maintained and disbursed as provided in this Agreement.
4. Escrow Holder is not a party to the Purchase Contract and shall have no obligation or liability in connection therewith.

IT IS HEREBY AGREED, on the basis of the foregoing facts and for valuable consideration, as follows:

AGREEMENT

1. Escrow. Escrow Holder shall establish a separate escrow for this Agreement (the "**Escrow**"). All funds delivered to Escrow Holder shall be deposited in Escrow Holder's trust account and credited to the Escrow. Escrow funds shall not bear interest. All funds disbursed by Escrow Holder shall be disbursed from the trust account and debited to the Escrow. Escrow Holder shall maintain a record of deposits and disbursements regarding the Escrow.

2. Disbursement Procedures. Escrow Holder is authorized and instructed, subject to available Escrow funds, to make Disbursements in accordance with the provisions set forth below.

- 2.1 Payment Information.** Information regarding the Payments is set forth in the Addendum (the "**Payment Information**"). Buyer represents and warrants to Escrow Holder that the Payment Information is complete and accurate in all respects and is not subject to qualification. Escrow Holder is authorized to conclusively presume (without any obligation to investigate or verify) that the Payment Information is complete and accurate in all respects.
- 2.2 Documentation.** Escrow Holder is not required to obtain any receipts, acknowledgment of payment from any payee or any documentation of any kind prior to making the disbursements except only to the extent specifically set forth on the Addendum. Escrow Holder shall have no obligation to verify documents or signatures and shall incur no liability regarding forged or false documents, signatures, or documents inadequately prepared for recordation.

- 2.3 **Disbursements.** Escrow Holder is authorized and instructed to disburse funds for the Payments in the amounts set forth in the Addendum as specified without further authorization or consent of any Party. Escrow Holder shall incur no liability in making disbursements pursuant to the foregoing. Escrow Holder shall make disbursements prior to the due date of each Payment. However, Escrow Holder shall incur no liability for late fees, delinquency charges or other amounts arising from any Payment not made by the applicable due date if such failure is due to force majeure events specified in Section 10.4 below. Escrow Holder's obligations are limited to disbursing Payments, and Escrow Holder is not responsible or liable in any manner for events and circumstances occurring after the funds are disbursed by Escrow Holder or for matters beyond the reasonable control of Escrow Holder.
- 2.4 **Limitation on Disbursements.** Escrow Holder shall not be obligated to make disbursements (a) which exceed the balance of funds in the Escrow, or (b) for which it does not possess the necessary and/or required Payment Information.
- 2.5 **Termination of Disbursements.** When funds in the Escrow are insufficient to make a full Payment, Escrow Holder is authorized to disburse any remaining funds in the Escrow to the Party as specified in the Addendum.
- 2.6 **Covenant. Buyer and Seller** agree to cooperate with Escrow Holder including providing such documents and forms as may be reasonably requested by Escrow Holder from time to time to effect the transaction contemplated by this Agreement.

3. **Escrow Holder Fees.**

- 3.1 **Basic and Additional Fees.** Escrow Holder shall receive, as compensation for its basic services under this Agreement, the sum of Three Hundred Fifty Dollars (**\$350**) for account set up and Ten Dollars (**\$10**) for each Payment processed (the "**Basic Fee**"), which fees are fully earned, non-refundable and payable in full upon the first deposit of funds with Escrow Holder. If Escrow Holder takes any action beyond its basic services, including but not limited to, reconciling conflicting Payment Information, Escrow Holder shall be immediately entitled to additional compensation (an "**Additional Fee**") at the rate of Fifty Dollars (**\$50**) per hour for time spent by any Escrow Holder. Escrow Holder is authorized and instructed to immediately disburse the Basic Fee and any Additional Fee to itself from the funds in the Escrow.
- 3.2 **Extraordinary Costs.** In the event Escrow Holder is required or requested to (a) produce, duplicate, or record documents; (b) utilize messengers or delivery services other than first-class U.S. mail; and/or (c) provide testimony or take action in any court, arbitration or other proceeding, the Party making such request must provide such additional sums as required by Escrow Holder as a condition for providing such service and, if such additional deposit is insufficient to cover the actual costs incurred or if Escrow Holder agrees to accommodate such request without such additional deposit, then the requesting Party shall promptly reimburse Escrow Holder for all costs and expenses in connection therewith, including but not limited to, duplicating cost, mileage, overnight delivery/courier services, wire transfers, recording fees, notary fees, labor-personnel charges (at Escrow Holder's then prevailing rate) and attorneys' fees. The foregoing amounts are in addition to the Escrow Holder Fees, and Escrow Holder shall not be required to act under this paragraph until such funds are deposited with Escrow Holder. Escrow Holder is authorized to disburse such amounts to itself from any additional deposit provided in accordance with this paragraph.

4. **Conflicting Instructions & Disputes.** Should any dispute arise in connection with this Agreement including, but not limited to, conflicting instructions, Escrow Holder may, in its sole discretion, either (i) make the Payments in accordance with Section 2 notwithstanding any demand by Seller to the contrary, or (ii) withhold disbursements until the dispute is resolved by legal process or an agreement acceptable to Escrow Holder. Prior to resolution of the dispute, Escrow Holder may, but shall not be obligated to (a) continue to make the Payments in accordance with Section 2; (b) hold the funds then in the Escrow and not make Payments, or (c) interplead the funds with the court. Escrow Holder may make the election to act under (a), (b) or (c) from time to time in its sole discretion during the dispute, and Escrow Holder shall be fully discharged and relieved from all liability in connection with such funds and shall be entitled to recover its costs and attorneys' fees in connection therewith.

5. **Escrow Holder's Obligations.** The obligations of Escrow Holder are limited solely to disbursing the Payments pursuant to Section 2 of this Agreement. In the event of a conflict between this Agreement and the Purchase Agreement, the terms of this Agreement shall control as to responsibilities and duties of Escrow Holder only.

6. **Limitation on Liability.** Under no circumstances (other than fraud, willful misconduct or gross negligence by Escrow Holder) shall Escrow Holder incur any liability in connection with this Agreement in excess of the amount of the Basic Fee set forth in this Agreement. This section is of key importance to Escrow Holder, and Escrow Holder would not enter into this Agreement in the absence of this section. This section shall survive termination of this Agreement.

7. Lack of Activity. In the event there is no disbursement from the Escrow for a continuous period of ninety (90) days (with the exception of accounts established for the purpose of paying real estate taxes or if otherwise agreed to by Escrow Holder) Escrow Holder may treat such inactivity as a dispute under this Agreement. In the event there is no disbursement from the Escrow for a continuous period of one (1) year, Escrow Holder may escheat any Escrow funds to the State of California.

8. Indemnity. Buyer and Seller (the “**Other Parties**”) shall (jointly and severally) indemnify, defend (with counsel approved by Escrow Holder) and hold Escrow Holder harmless from and against all claims, actions, suits, judgments, awards, liabilities, damages, costs, expenses and attorneys’ fees (collectively, “**Claims**”), including those of the Other Parties, in connection with or allegedly in connection with this Agreement and/or the Escrow. The Other Parties shall promptly reimburse Escrow Holder for any costs, expenses and attorneys’ fees incurred in connection with the foregoing (with or without the filing of any proceeding). This section is of key importance to Escrow Holder, and Escrow Holder would not enter into this Agreement in the absence of this section. It is the intent of the parties that this section shall (a) be broadly construed to protect Escrow Holder from all Claims, (b) apply regardless of any negligence of Escrow Holder (except where the Claim arises solely due to the fraud, willful misconduct or gross negligence of Escrow Holder), and (c) apply even if the Other Parties have not been negligent or otherwise at fault. As used in this section, “Escrow Holder” includes each officer, director, employee and shareholder of Escrow Holder. This section shall survive any termination of this Agreement.

9. Maintenance of Records. Escrow Holder shall keep accurate records as to (a) amounts deposited in the Escrow; and (b) amounts disbursed from the Escrow. As required by California law, original documents shall remain at Escrow Holder’s office and upon reasonable notice shall be available for inspection by the Other Parties. Upon not less than forty-eight (48) hours prior written notice to Escrow Holder, the Other Parties may, through a bonded photocopying service, photocopy, at the requesting party's expense, documents which relate to this Agreement. In the event any photocopying is done by Escrow Holder, the requesting party shall reimburse Escrow Holder for the photocopying charges and labor charges relating thereto prior to delivery of the copies to the requesting party.

10. Miscellaneous.

- 10.1** **Amendments.** This Agreement may only be amended or modified by a written amendment executed by all parties.
- 10.2** **Notices.** All notices in connection with this Agreement must be in writing. Any notice to be given or other document to be delivered by a party to the other parties hereunder shall be delivered in person to the other parties or may be deposited in the United States mail in the State of California, duly certified or registered, with postage prepaid and addressed to said party to whom intended as set forth on the Addendum. Any party hereto may from time to time, by written notice to the other parties, designate a different address which shall be substituted for the one above. If any notice or other document is sent by certified or registered mail, as aforesaid, the same shall be deemed served or delivered forty-eight (48) hours after mailing thereof as above provided.
- 10.3** **Attorneys’ Fees.** In any action between the parties regarding this Agreement or the Escrow, the prevailing party in that action shall be entitled to recover its reasonable costs and expenses, including reasonable attorneys’ fees. All attorneys’ fees incurred by Escrow Holder in connection with this Agreement, whether or not an action is filed, may (at Escrow Holder’s choice) be immediately reimbursed from the funds in Escrow.
- 10.4** **Force Majeure.** In the event an act of the government, war conditions, fire, flood, or other act of God prevents Escrow Holder from performing in accordance with the provisions of this Agreement, such nonperformance shall be excused and shall not be considered a breach or default for so long as the said conditions prevail.
- 10.5** **Interpretation.** This Agreement shall be interpreted and construed in accordance with California law. Any action against Escrow Holder involving this Agreement shall be maintained in the appropriate court in Orange County, California.
- 10.6** **No Third-Party Beneficiary.** This Agreement is made and intended to be for the benefit of Buyer, Seller and Escrow Holder only and is not intended to be for the benefit of any payee or anyone else.
- 10.7** **Merger.** This Agreement, together with the Addendum, sets forth the full agreement among the parties regarding the Escrow and the obligations of Escrow Holder. All prior agreements and understandings are terminated and of no further force or effect.
- 10.8** **Severability.** In the event any provision of this Agreement should be determined by a court of competent jurisdiction as unenforceable or void under applicable law, that provision shall be deleted; but the remaining provisions of this Agreement shall remain in full force and effect.

- 10.9 **Execution in Counterpart.** The escrow instructions and any amendments may be executed in one or more counterparts, each of which shall be deemed an original, an all of which taken together shall constitute the same instruction.
- 10.10 **Captions.** The caption headings for the sections of this Agreement are for convenience only and shall not be considered to limit, expand or define the content of the sections.
- 10.11 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and assigns.
- 10.12 **Warranty of Authority.** Each person executing this Agreement represents and warrants that he or she has full power and authority to do so and that no other authorizations or approvals of any kind are necessary.

11. Special Disclosures

- 11.1 **Disbursements.** All disbursements shall be made by Escrow Holder’s check or by wire transfer unless otherwise instructed in writing. California law mandates that Escrow Holder may not disburse funds until the funds are, in fact, available in Escrow Holder’s account. Wire transfers are immediately disbursable upon confirmation of receipt. Funds deposited by a cashier’s or certified check are generally available on the next banking day following deposit. Funds deposited by a personal check and other types of instruments may not be available until confirmation from Escrow Holder’s bank which can vary from 2 to 10 days.
- 11.2 **Disclosure of Possible Benefits to Escrow Holder.** As a result of Escrow Holder maintaining its general escrow accounts with the depositories, Escrow Holder may receive certain financial benefits such as an array of bank services, accommodations, loans or other business transactions from the depositories (“collateral benefits”). All collateral benefits shall accrue to the sole benefit of Escrow Holder and Escrow Holder shall have no obligation to account to the parties to this Escrow for the value of any such collateral benefits.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of this Agreement.

“Buyer”

“Seller”

Print Name: _____

Print Name : _____

By _____
Print Name: _____
Its _____

ACCEPTED:

“Escrow Holder”

First American Fund Control, Inc., a California corporation

By _____
Print Name _____
Its _____

ADDENDUM TO HOLDING ESCROW AGREEMENT

This Addendum constitutes a part of the foregoing Agreement between Escrow Holder, Buyer and Seller.

** If the sections of this addendum are not applicable to your intended purpose and an alternative addendum is required for the type of holding escrow account you are setting up, please substitute here.*

Buyer Obligations: It is the duty and responsibility of the Buyer to provide Escrow Holder with an original copy of the coupon once received from the Tax Collector's office if account is established for the purpose of paying Buyer's taxes, or, an original copy of the first mortgage coupon received from the lender if account is established for the purpose of paying Buyer's mortgage payments. If Buyer has account established for home improvements, HOA fees, or an alternative purpose, Buyer must provide copy of pertinent invoice or bill to Escrow Holder in order to receive payment. Please note additional information regarding this Buyer obligation is noted in **bold** type where applicable in the **Payment Information** (Section 2) below.

1. Basic Information. Buyer and Seller represent and warrant to Escrow Holder that the following information is true and correct. Please be sure to complete all required fields so that Escrow Holder has complete contact and payment information necessary for fund disbursement. An automated email from Escrow Holder regarding file setup and outgoing payment may be received by all parties to this Agreement provided they list their email address in the spaces provided in this section.

1.1 New Property.
The address of the new property is: _____

1.2 Amount of Funds.
The amount of funds to be deposited with Escrow Holder is: \$ _____.

1.3 Notices to Buyer. ** If you wish to receive notification of file activation and outgoing payment, please provide your email address.*
Notices to Buyer may be given as follows,
Mail (If different from New Property): _____

Telephone: (____) ____ - ____ Fax: (____) ____ - ____ Email: _____

1.4 Notices to Seller. ** If you wish to receive notification of file activation and outgoing payment, please provide your email address.*
Notices to Seller may be given as follows:
Mail: _____

Telephone: (____) ____ - ____ Fax: (____) ____ - ____ Email: _____

1.5 Originating Escrow Company Information.
Company: _____ . Contact: _____
Mail : _____

Telephone: (____) ____ - ____ Fax: (____) ____ - ____ Email: _____

1.6 <u>Notices to Escrow Holder.</u> First American Fund Control, Inc. P.O. Box 25619, Santa Ana, CA 92799 Telephone (866) 536-0179 FAX (866) 536-0177	<u>For Overnight Delivery</u> First American Fund Control, Inc. Attn: Greg Brent 200 Commerce Irvine, CA 92602
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2. Payment Information. Escrow Holder is authorized to make Payments in accordance with the following sections that are marked as "yes". If an item is not marked "yes" it will be presumed to be "no."

2.1 Yes / No

Mortgage Payment.

Loan Number: _____

Payee and Payment Address: _____

Payment Amount: \$ _____

Date of first payment to be made: _____

Due Date of each Payment: _____ Duration of Payment: _____.

Buyer is to provide Escrow Holder with an original copy of first mortgage payment coupon in order to verify accurate loan payment information. Buyer is required to mail mortgage coupon to one of the two addresses for the Escrow Holder listed above in item 1.6 prior to Escrow Holder scheduling payments.

2.2 Yes / No

Real Estate Tax Payment.

If Buyer "marks" the box below, Buyer (a) represents and warrants that real estate tax payments are not included within the Mortgage Payment, and (b) authorizes Escrow Holder to make such payments. **Escrow Holder shall have no obligation to make such payments until Buyer provides Escrow Holder with the current tax bill and the applicable payment coupons. Buyer is required to mail tax bill and payment coupons to one of the two addresses for the Escrow Holder listed above in item 1.6.**

Buyer authorizes Escrow Holder to make payments in accordance with the payment coupons.

2.3 Yes / No

Other Payment.

Escrow Holder is authorized to disburse \$ _____, on or before _____, to the following payee: _____, to the following address:

. Duration of Payment: _____.

*Additional payee(s):

Escrow Holder is authorized to disburse \$ _____, on or before _____, to the following payee: _____, to the following address:

Duration of Payment: _____.

**If additional payment instruction is required, please provide information on a separate page and attach to the end of this document.*

2.4 Yes / No

Special Option for Direct Payments to Buyer.

By initialing below, Buyer and Seller authorize Escrow Holder to disburse all of the Payments directly to Buyer, rather than directly to any of the payees referred to in the foregoing sections. This option is only effective if initialed by ***both*** Buyer and Seller.

Buyer's Initials: [___ / ___] Seller's Initials: [___]

Seller authorizes Escrow Holder to disburse the following amount \$ _____ in the following increment _____ to be made for the purpose of: _____.

By marking this box, Seller requires that Buyer provides the following to Escrow Holder in order to receive funds directly: _____

Duration of Payment: _____.

2.5 Yes / No

Disbursement of Balance

By selecting **Yes**, In the event that the funds then held by Escrow Holder are insufficient to make a full Payment, Seller authorizes FAFC to disburse remaining balance payable to the Buyer and sent to them directly.

By selecting **No**, Buyer still has the option to supplement the final payment by providing a check payable to the specified payee, which shall then be mailed concurrently with the remaining funds available in the account by the Escrow Holder.

The Buyer also has the option of requesting the Escrow Holder to mail a check directly to the Buyer, which shall only be payable to the Payee, so that the Buyer may then supplement the remainder of the payment with their own funds and mail concurrently to the Payee.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of this Agreement.

“Buyer”

“Seller”

Print Name _____

By _____

Name _____

Print Name _____

Its _____

ACCEPTED:

“Escrow Holder”

First American Fund Control, Inc., a California corporation

By _____

Print Name _____

Its _____