

ESCROW AGREEMENT



# MORGAN CREEK

## ESCROW AGREEMENT

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2000, between Morgan Creek, L.L.C., a Michigan Limited Liability Company ("Developer"), and Lawyers Title Insurance Corporation, by and through its agent, First Security Title, Inc. ("Escrow Agent").

### RECITALS:

WHEREAS, Developer is constructing residential Condominium Units at Morgan Creek which has been established as a Condominium Project under the Michigan Condominium Act (Act No. 59, Public Acts of 1978, as amended, hereinafter the Act); and,

WHEREAS, Developer is entering into Purchase Agreements with Purchasers for such Units in substantially the form attached hereto, and each Purchase Agreement requires that all deposits made under such Agreement be held by Escrow Agent under an Escrow Agreement; and,

WHEREAS, the parties hereto desire to enter into such an Escrow Agreement for the benefit of Developer and for the benefit of each Purchaser (hereinafter called "Purchaser") who makes a deposit under a Purchase Agreement.

NOW, THEREFORE, it is agreed as follows:

1. Developer shall, after receipt, promptly transmit to Escrow Agent all sums deposited with it under a Purchase Agreement together with a fully executed copy of such Agreement.
2. The sums paid to Escrow Agent under the terms of any Purchase Agreement shall be held and released to Developer or Purchaser only upon the conditions hereinafter set forth:
  - A. Except as provided in Paragraph 2E hereof, amounts required to be retained in escrow in connection with the purchase of a Unit shall be released to the Developer pursuant to Paragraph 4 only upon all of the following:
    - (i) Issuance of certificate of occupancy for the Unit, if required by local ordinance.
    - (ii) Conveyance of legal or equitable title to the Unit to the Purchaser.
    - (iii) Receipt by the Escrow Agent of a certificate signed by a licensed professional engineer or architect either confirming that those portions of the phase of the Project in which the Condominium Unit is located and which on the Condominium Subdivision Plan are labeled "must be built" are substantially complete, or determining the amount necessary for substantial completion thereof.
    - (iv) Receipt by the Escrow Agent of a certificate signed by a licensed professional engineer or architect either confirming that recreational or other facilities which on the Condominium Subdivision Plan are labeled "must be built", whether located within or outside of the phase of the Project in which the Condominium Unit is located, and which are intended for common use, are substantially complete, or determining the amount necessary for substantial completion thereof.
  - B. In the event that the Purchaser under a Purchase Agreement shall default in making any payments required by said Agreement or in fulfilling any other obligations thereunder, for a period of 10 days after written notice by Developer to Purchaser, Escrow Agent shall release sums held pursuant to said Agreement to Developer in accordance with the terms of said Agreement.
  - C. Escrow Agent shall be under no obligation to earn interest upon the escrowed sums held pursuant to this Agreement. In the event that interest is requested to be earned upon such sums, however, such interest shall be separately accounted for by Escrow Agent and shall be held in escrow and paid to Developer upon termination of this Escrow Agreement.
  - D. In the event that a Purchaser duly withdraws from a Purchase Agreement prior to the time that said Agreement becomes binding under Section 3 of the General Provisions thereof, then Escrow Agent shall release to Purchaser all of Purchaser's deposits held thereunder.



- E. If Developer requests that all of the escrowed funds held hereunder or any part thereof be delivered to it prior to the time it otherwise becomes entitled to receive the same, Escrow Agent may release all such sums to Developer if Developer has placed with Escrow Agent an irrevocable letter of credit drawn in favor of Escrow Agent in form and substance satisfactory to Escrow Agent and securing full repayment of said sums, or has placed with Escrow Agent such other substitute security as may be permitted by law and approved by Escrow Agent.
- F. The Escrow Agent shall not be obligated to release any funds until it can satisfactorily ascertain that said funds have been "paid", "settled", and "finally collected", as such terms are defined under the provisions of MCL 440.4100, et seq.

3.A. Substantial completion and the estimated cost for substantial completion of the items described in Paragraphs 2A(iii) and 2A(iv) and in Paragraph 4 shall be determined by a licensed professional engineer or architect, as provided in Paragraph 3B, subject to the following:

- (i) Items referred to in Paragraph 2A(iii) shall be substantially complete only after all utility mains and leads, all major structural components of buildings, all building exteriors and all driveways, landscaping and access roads, to the extent such items are designated on the Condominium Subdivision Plan as "must be built," are substantially complete in accordance with the pertinent plans therefor.
- (ii) If the estimated cost of substantial completion of any of the items referred to in Paragraphs 2A(iii) and 2A(iv) cannot be determined by a licensed professional engineer or architect due to the absence of plans, specifications, or other details that are sufficiently complete to enable such a determination to be made, such cost shall be the minimum expenditure specified in the recorded Master Deed or amendment for completion thereof. To the extent that any item referred to in Paragraphs 2A(iii) and 2A(iv) is specifically depicted on the Condominium Subdivision Plan, an estimate of the cost of substantial completion prepared by a licensed professional engineer or architect shall be required in place of the minimum expenditure specified in the recorded Master Deed or amendment.

- B. A structure, element, facility or other improvement shall be deemed to be substantially complete when it can be reasonably employed for its intended use and, for purposes of certification under this section, shall not be required to be constructed, installed, or furnished precisely in accordance with the specifications for the Project. A certificate of substantial completion shall not be deemed to be a certification as to the quality of the items to which it relates.

4. Upon receipt of a certificate issued pursuant to Paragraphs 2A(iii) and 2A(iv) determining the amounts necessary for substantial completion, the Escrow Agent may release to the Developer all funds in escrow in excess of the amounts determined by the issuer of such certificate to be necessary for substantial completion. In addition, upon receipt by the Escrow Agent of a certificate signed by a licensed professional engineer or architect confirming substantial completion in accordance with the pertinent plans of an item for which funds have been deposited in escrow, the Escrow Agent shall release to the Developer the amount of such funds specified by the issuer of the certificate as being attributable to such substantially completed item. However, if the amounts remaining in escrow after such partial release would be insufficient in the opinion of the issuer of such certificate for substantial completion of any remaining incomplete items for which funds have been deposited in escrow, only the amount in escrow in excess of such estimated cost to substantially complete shall be released by the Escrow Agent to the Developer. Notwithstanding a release of escrowed funds that is authorized or required by this Paragraph, the Escrow Agent may refuse to release funds from an escrow account if the Escrow Agent, in its judgment, has sufficient cause to believe the certificate confirming substantial completion or determining the amount necessary for substantial completion is fraudulent or without factual basis.

5. Not earlier than 9 months after closing the sale of the first Unit in a phase of a Condominium Project for which escrowed funds have been retained under Paragraph 2A(iii) or for which security has been provided under Paragraph 2E, the Escrow Agent, upon the request of the Association or any interested Co-owner, shall notify the Developer of the amount of funds deposited under Paragraph 2A(iii) or security provided under Paragraph 2E for such purpose that remains, and of the date determined under this Paragraph upon which those funds can be released. In the case of a recreational facility or other facility intended for general common use, not earlier than 9 months after the date on which the facility was promised in the Condominium Documents to be completed by the Developer, the Escrow Agent, upon the request of the Association or any interested Co-owner, shall notify the Developer of the amount of funds deposited under Paragraph 2A(iv) or security provided under Paragraph 2E for such purpose that remains, and of the date determined under this Paragraph upon which those funds can be released. Three months after receipt of a request pertaining to funds described in Paragraph 2A(iii) or 2A(iv), funds that have not yet been released to the Developer may be released by the Escrow Agent for the purpose of completing incomplete improvements for which the funds were originally retained, or for a purpose specified in a written agreement between the Association and the Developer entered into after the Transitional Control Date. The agreement may specify that issues relating to the use of the funds be submitted to arbitration. The Escrow Agent may release funds in the manner provided in such an agreement or may initiate an interpleader action and deposit retained funds with a court of competent jurisdiction. In any interpleader action, the circuit court shall be empowered, in its discretion, to appoint a



receiver to administer the application of the funds. Any notice or request provided for in this Paragraph shall be in writing.

6. The Escrow Agent in the performance of its duties under this Agreement shall be deemed an independent party not acting as the agent of the Developer, any Purchaser, Co-owner, or other interested party. So long as the Escrow Agent relies upon any certificate, cost estimate, or determination made by a licensed professional engineer or architect, as described in the Act, the Escrow Agent shall have no liability whatever to the Developer or to any Purchaser, Co-owner, or other interested party for any error in such certificate, cost estimate, or determination, or for any act or omission by the Escrow Agent in reliance thereon. The Escrow Agent shall be relieved of all liability upon release, in accordance with this Agreement, of all amounts deposited with it pursuant to the Act.

7. Escrow Agent may require reasonable proof of occurrence of any of the events, actions, or conditions stated herein before releasing any sums held by it pursuant to any Purchase Agreement to a Purchaser thereunder, or to the Developer.

8. Upon making delivery of the funds deposited with Escrow Agent pursuant to any of the aforementioned Purchase Agreements and performance of the obligations and services stated therein and herein, Escrow Agent shall be released from any further liability under any such Agreement, it being expressly understood that liability is limited by the terms and provisions set forth in such Agreement and in this Agreement, and that by acceptance of this Agreement, Escrow Agent is acting in the capacity of a depository and is not, as such, responsible or liable for the sufficiency, correctness, genuineness or validity of the instruments submitted to it, or the marketability of title to any Unit reserved or sold under any other Agreement. It is not responsible for the failure of any bank used by it as an escrow depository for funds received by it under this escrow.

9. Developer hereby agrees to indemnify and hold harmless Escrow Agent for any loss or damage sustained by Escrow Agent, including, but not limited to, attorney fees resulting from any litigation arising from the performance of Escrow Agent's obligations and services, provided such litigation is not a result of Escrow Agent's wrongful act or negligence.

10. All notices required or permitted hereunder and all notices of change of address shall be deemed sufficient if personally delivered or sent by registered mail, postage prepaid and return receipt requested, addressed to the recipient party at the address shown below such party's signature to this Agreement or upon any of the other said Agreements. For purposes of calculating time periods under the provisions of this Agreement, notice shall be deemed effective upon mailing or personal delivery, whichever is applicable.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the date set forth at the outset hereof.

LAWYERS TITLE INSURANCE CORPORATION,  
by and through its agent,  
FIRST SECURITY TITLE, INC.,  
ESCROW AGENT

MORGAN CREEK, L.L.C.,  
a Michigan Limited Liability Company,  
DEVELOPER

By: \_\_\_\_\_

By: Curtis-Kaftan, LLC  
a Michigan Limited Liability Company,  
Its: Sole Member

Its: \_\_\_\_\_

9450 South Main Street  
Plymouth, MI 48170

By: Morgan Creek Management, Inc.  
a Michigan Corporation  
Its: Manager

By: \_\_\_\_\_  
Mark A. Menuck  
Its: Vice President  
29992 Northwestern Highway, Suite A  
Farmington Hills, MI 48334

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INFORMATION STATEMENT



# MORGAN CREEK

## INFORMATION STATEMENT

**NOTICE TO PURCHASERS:** Stated below are the provisions of Section 84a of the Condominium Act of 1978, as amended (Act No. 59 of the Michigan Public Acts of 1978, as amended, hereinafter referred to as the "Act"). A copy of this section of the Act is being submitted to Purchasers to comply with the requirements of the Act. By signing below, the Purchasers acknowledge that Purchasers have reviewed this section of the Act and have received from Developer a copy of the recorded Master Deed, signed Purchase Agreement, Escrow Agreement, Condominium Buyer's Handbook, and Disclosure Statement.

Section 84a of the Act provides in part:

- (1) The developer shall provide copies of all of the following documents to a prospective purchaser of a condominium unit, other than a business condominium unit:
  - (a) The recorded master deed.
  - (b) A copy of a purchase agreement that conforms with section 84 [of the Act], and that is in a form in which the purchaser may sign the agreement, together with a copy of the escrow agreement.
  - (c) A condominium buyer's handbook. The handbook shall contain, in a prominent location and in boldface type, the name, telephone number, and address of the person designated by the administrator to respond to complaints. The handbook shall contain a listing of the available remedies as provided in section 145 [of the Act].
  - (d) A disclosure statement relating to the project containing all of the following:
    - (i) An explanation of the association of co-owners' possible liability pursuant to Section 58 [of the Act].
    - (ii) The names, addresses, and previous experience with condominium projects of each developer and any management agency, real estate broker, residential builder, and residential maintenance and alteration contractor.
    - (iii) A projected budget for the first year of operation of the association of co-owners.



# MORGAN CREEK

## INFORMATION STATEMENT

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    - (iii) A projected budget for the first year of operation of the association of co-owners.



evidence that the documents required in subsection (1) were received and understood by the purchaser.

\* \* \*

- (5) With regard to any documents required under this section, a developer shall not make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.
- (6) The developer promptly shall amend a document required under this section to reflect any material change or to correct any omission in the document.
- (7) In addition to other liabilities and penalties, a developer who violates this section is subject to section 115 [of the Act, which section imposes penalties upon a developer or any other person who fails to comply with the Condominium Act or any rule, agreement or master deed and may make a developer liable to a purchaser of a unit for damages].

PURCHASERS:

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Dated: \_\_\_\_\_

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