

## AGREEMENT AND ASSIGNMENT OF SURPLUS RIGHTS

**THIS AGREEMENT** ("Agreement") is entered into by and between: \_\_\_\_\_  
\_\_\_\_\_ ("Assignor") and \_\_\_\_\_  
("Assignee") with a principal place of business at \_\_\_\_\_.

### RECITALS:

**WHEREAS**, Assignor is a legal titleholder of record of such real property or a beneficiary or heir at law of such a titleholder of that certain real property located at: \_\_\_\_\_  
\_\_\_\_\_, situate in: \_\_\_\_\_ County, \_\_\_\_\_ and  
bearing parcel identification number: \_\_\_\_\_ (the "Property"); and

**WHEREAS**, the Property is the subject of a foreclosure action in: \_\_\_\_\_  
County, \_\_\_\_\_, bearing Case No.: \_\_\_\_\_ (the "Foreclosure Action"); and

**WHEREAS**, Assignor wants to hire Assignee to identify and recover any and all surplus funds and other monies due to which Assignor may be entitled as a result of the forced sale of the Property in the Foreclosure Action ("Surplus"); and

**WHEREAS**, the forced sale of the Property in the Foreclosure Action is currently scheduled to occur on: \_\_\_\_\_.

**NOW, THEREFORE** in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The parties represent and warrant that the Recitals set forth above are true and correct in all material respects. The defined terms in the Recitals set forth above are hereby incorporated into this Agreement by reference.
2. Assignor hereby fully assigns, sells, transfers, and conveys to Assignee the exclusive right to obtain, claim, and recover any and all Surplus, subject to the provisions herein. Assignor acknowledges that this assignment is a permanent, exclusive and irrevocable transfer of all of Assignor's interest in the Surplus to Assignee. This assignment cannot be cancelled or otherwise rescinded without the express written approval of Assignee, if Assignee in its sole discretion so elects.
3. Assignor acknowledges that Assignee and its agents are not attorneys and cannot, have not, and are not expected to provide Assignor with legal advice. Assignor fully grants and assigns to Assignee full authority and sole discretion to decide whether an attorney is needed to assist it in obtaining a successful outcome in the surplus claims process, and, if so, which attorney to select. Assignor further authorizes any such attorney selected by Assignee to file in Assignor's name with the Court, the Clerk of Court and any other relevant entity any and all necessary documents in furtherance of Assignee's efforts to claim and collect the Surplus pursuant to this Agreement. Assignor further expressly approves Assignee's advancement of any and all attorneys' fees and costs that Assignee, in its sole discretion, deems necessary in its efforts to successfully claim the Surplus. Those costs will be paid out of the Assignees portion of the funds.
4. The parties agree that the Surplus recovered by Assignee in the Foreclosure Action shall be paid directly to Assignee and delivered to its usual place of business or, if Assignee so elects, paid directly to Assignee's attorney and delivered to said attorney's usual place of business. Assignor specifically and fully authorizes Assignee and its attorney to disburse the Surplus as per by the terms of this Agreement.

5. Assignor hereby authorizes Assignee to sign the name of the Assignor to any check, draft, promissory note, or other instrument in writing which is payable to the order of the Assignor, or to sign the name of the Assignor to any instrument in writing, whenever it shall be necessary to do so, to carry out the purpose of this Agreement.

6. The parties agree that Assignee is entitled to deduct \_\_\_\_\_ percent (\_\_\_\_ %) from the Surplus recovered. The percentage earned by Assignee is in consideration of services to Assignor which includes, but is not limited to, locating, notifying, and processing paperwork in support of the surplus claim. Assignor agrees the percentage retained by Assignee is fair and reasonable.

7. Assignor agrees that any and all attorneys' fees and costs advanced by Assignee in the recovery of Surplus shall be paid from \_\_\_\_\_, and portion of the net Surplus under this Agreement.

8. This Agreement begins on the date Assignor executes this Agreement and will continue until such time as Assignee has successfully collected all of the Surplus or Assignee otherwise completed its performance under this Agreement (as determined solely by Assignee), at which time the term of this Agreement shall conclude. The parties expressly acknowledge that this Agreement survives any and all orders vacating or voiding existing sales and resetting sale dates.

9. Assignor acknowledges and agrees that Assignee made the following disclosures to Assignor:

a) The amount of the excess proceeds eligible for distribution is \$ \_\_\_\_\_

b) The Assignor is entitled to \$ \_\_\_\_\_

c) The Assignee is entitled to \$ \_\_\_\_\_

10. Assignor acknowledges and understands that:

a) Assignor does not need an attorney or other representative to recover the Surplus.

b) Assignor has the right to consult with an independent attorney of Assignor's choice before executing this Agreement.

11. Assignor understands that Assignee cannot guarantee that it will obtain the Surplus, as other parties may have a superior claim to the Surplus. In the event, Assignee is unable to obtain the Surplus, Assignor will pay nothing to Assignee.

12. Assignor represents and warrants that Assignor has not assigned the right to obtain the Surplus to any other party. Assignor agrees not to enter into any other agreements or to assign the Surplus to any other party. Assignor acknowledges and agrees that a breach of this provision would be a material breach of this Agreement.

13. Assignor acknowledges and agrees that Assignor must cooperate with Assignor's recovery efforts. Assignor understands that obtaining the Surplus is a time sensitive matter, as the Assignment must be filed with the court on or before 60 days after the filing of the certificate of disbursements. Assignor agrees to provide Assignee with all relevant information required to timely file the Assignment with the court.

14. It is expressly agreed that liquidated damages payable under this Agreement do not constitute a penalty and that the parties, having negotiated in good faith for such specific Liquidated Damages and having agreed that the amount of such liquidated damages is reasonable in light of the anticipated harm caused by the breach related thereto and the difficulties of proof of loss and inconvenience or nonfeasibility of obtaining any adequate remedy, are estopped from contesting the validity or enforceability of such liquidated damages.

15. The parties agree this Agreement shall be governed by and construed in accordance with the laws of the State of \_\_\_\_\_. The parties agree that the exclusive jurisdiction for any lawsuit related to or

arising under this Agreement shall be in the state court sitting in \_\_\_\_\_ County, State of \_\_\_\_\_. The parties waive any objection to jurisdiction and venue either party may otherwise have for any such lawsuit. The parties hereby waive the right to a jury trial concerning any disputes that may arise concerning this Agreement.

16. If either party brings an action to enforce their rights under this contract, the prevailing party shall recover its expenses (including reasonable attorneys' fees) incurred in said action, including any appeals. This provision survives the termination of this Agreement.

17. In the event that there is a dispute regarding this Agreement between Assignee and Assignor or between Assignee and another party to whom Assignor may have assigned Surplus, Assignor agrees that 100% of the Surplus at issue shall be held in escrow by the Court Registry or Assignee's attorney, as appropriate under the circumstances until such time as said dispute is resolved, including separate enforcement actions and appeals.

18. Assignor hereby acknowledges and agrees that Assignor may sign this Agreement electronically for convenience or efficiency, and therefore agrees that Assignor's signature in DocuSign, HelloSign or other electronic digital form carries the same legal weight and effect of Assignor's physical signature and Assignor waives the right to challenge same.

19. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

20. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

**IN WITNESS WHEREOF**, the parties hereto execute this Agreement.

***READ, UNDERSTOOD, ACKNOWLEDGED and AGREED:***

ASSIGNOR:

ASSIGNEE:

\_\_\_\_\_

\_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

State of \_\_\_\_\_)

County of \_\_\_\_\_)

Before me, \_\_\_\_\_, on this day personally appeared affiant(s), and acknowledged to me that they executed the foregoing instrument for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.