**EARNEST MONEY LOAN AGREEMENT**

**THIS EARNEST MONEY LOAN AGREEMENT** (“Agreement”), is effective as of the latest date this Agreement is executed by the Parties as set forth below (the “Effective Date”).

1. **BASIC TERMS**. This Section 1 defines the Basic Terms of this Agreement.

 1.1 Property: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 1.2 Parties:

 Buyer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Address for Buyer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Email for Buyer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Lender: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Address for Lender: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Email for Lender: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 1.3 Seller: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 1.4 Escrow Agent/

 Closing Attorney: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 1.5 Escrow/File No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 1.6 Earnest Money: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Deposit")

 1.7 Lender Compensation: [ ]  $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

 [ ]  \_\_\_\_\_% of Original Buyer's Assignment Fee (or similar payment or compensation) or proceeds from a Double Escrow; or

 [ ]  $\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or \_\_\_\_\_% of Buyer's Assignment Fee (or similar payment or compensation) or proceeds from a Double Escrow, whichever is greater.

2. **LOAN FROM LENDER**. Lender agrees to provide Buyer with the Deposit in order for Buyer to open escrow with the Escrow Agent as required by Buyer's purchase contract with Seller for the Property (the "Purchase Contract).

3. **REPAYMENT OF DEPOSIT AND LENDER COMPENSATION**. Buyer shall repay the Deposit to the Lender and shall cause Lender to be paid the Lender Compensation set forth in Section 1.7 upon the close of escrow of the Property whether through the escrow listed above or a second escrow wherein Buyer sells the Property as the seller (a "Double Escrow").

4. **INSTRUCTIONS TO ESCROW AGENT**. Buyer, shall irrevocably instruct Escrow Agent to pay the Deposit (unless it has previously been paid by Escrow Agent to Lender) plus the Lender Compensation from the Buyer's proceeds from the closing of the sale of the Property whether through the escrow listed above or a Double Escrow. Additionally, Buyer shall assign its right to the Deposit and irrevocably instruct Escrow Agent to pay the Deposit directly to Lender in the event the Deposit is to be returned to Buyer for any reason prior to the close of escrow. If the Purchase Contract is cancelled prior to the close of escrow, Buyer shall pay to Lender all of the fees Lender incurred in providing the Deposit to Escrow Agent (the "Lender Fees"). Upon the cancellation of the Purchase Contract prior to the close of escrow and repayment of the Deposit and Lender Fees to Lender, Buyer will not owe the Lender Compensation to Lender. The prior sentence does not apply if Buyer and Seller enter into a novation or mutually cancel the Purchase Contract so that Seller can enter into and the sell the Property to a different buyer. In such circumstance(s), Lender shall be paid its Lender Compensation from any amounts to be received by Buyer from Seller or any third-party buyer.

5. **REPAYMENT TO LENDER UPON LOSS OF EARNEST MONEY OR FAILURE TO PAY LENDER FEES.** In the event the Purchase Contract is cancelled prior to the close of escrow and the Deposit and Lender Fees are not repaid to Lender within five (5) days after cancellation of the Purchase Contract, Buyer shall repay the Deposit and Lender Fees plus interest at the rate of twenty-five percent (25%) per annum from the Effective Date until the Deposit, Lender Fees, all accrued interest, and all other amounts owed to Lender under this Agreement have been paid to Lender in full.

6. **SECURITY.** The repayment of the Deposit, Lender Fees, accrued interest, if any, and all other amounts owed to Lender under this Agreement shall be secured by and Buyer hereby grants Lender a lien against any funds held in any escrow for, on behalf of, or for the benefit of Buyer for any real estate transaction in which Buyer is the buyer, seller, or assignor (the "Collateral"). The lien against the Collateral created by this Agreement may be evidenced by a UCC-1 financing statement to be filed with the appropriate government office in the state where the Property is located or in any other state in which the Buyer engages in real estate transactions.

7. **ATTORNEYS' FEES AND COSTS**. Buyer agrees to pay the following costs, expenses and attorney fees paid or incurred by Lender, or adjudged by a court: (1) Reasonable costs of collection, court costs, and expenses, and attorneys’ and expert fees paid or incurred in connection with the collection or enforcement of the amounts owed to Lender under this Agreement; and (2) costs of suit.

8. **NOTICES**. Any and all notices, demands or requests required or permitted hereunder shall be in writing and shall be effective upon personal delivery, electronic mail, or upon receipt, if deposited in the U.S. Mail, registered or certified, return receipt requested, postage prepaid, or if deposited with any commercial air courier or express service.

9. **NO ORAL CHANGES OR REPRESENTATIONS.** This Agreement supersedes any and all prior understandings and agreements. This Agreement may be amended or modified only in writing signed by the Parties.

10. **MISCELLaneous.**

 10.1 *Assignment*. No Party may assign this Agreement without the written consent of all other Parties hereto.

 10.2 *Successors and Assigns*. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

 10.3 *Waiver*. The waiver by any party hereto of any right granted to it hereunder shall not be deemed to be a waiver of any other right granted hereunder, nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.

 10.4 *Severability*. If any provision of this Agreement or any portion of any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not alter the remaining portion of such provision, or any other provision hereof, as each provision of this Agreement shall be deemed severable from all other provisions hereof.

 10.5 *Time is of the Essence.* Time is of the essence with respect to the performance of all terms, conditions and provisions of this Agreement.

 10.6 *Choice of Law.* This Agreement shall be governed and enforced under the laws of the state where the Property is located without regard to any conflict of law provisions.

 10.7 *Counterparts*. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument. The parties may execute this Agreement by electronic means and may deliver their signatures by facsimile transmission or .pdf e-mail delivery, and such transmission shall have the same effect as delivery of original signatures.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates written below.

**Buyer:**

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Signer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**Lender:**

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Signer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**PERSONAL GUARANTEE**

The individual(s) whose signatures are below, personally guarantee Buyer's performance under this Agreement and agree to be jointly and severally liable with Buyer for the payment to Lender of the amounts set forth in this Agreement.

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Signer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Signer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_