

ASSIGNMENT AND ASSUMPTION OF CONTRACT

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACT (the "Assignment") is dated as of \_\_\_\_\_ (the "Assignment Effective Date"), by and between \_\_\_\_\_ ("Assignor") and \_\_\_\_\_ ("Assignee") with reference to the following facts:

RECITALS

A. Assignor is the "Buyer" under that certain \_\_\_\_\_, dated as of \_\_\_\_\_ (the "PSA"), by and between Assignor and \_\_\_\_\_, as seller thereunder ("Seller"), regarding the purchase of certain real property commonly known as \_\_\_\_\_ as more particularly described in such PSA (the "Property").

B. The escrow agent for the PSA is \_\_\_\_\_ ("Escrow Agent") at \_\_\_\_\_ Company ("Escrow Holder") with contact information as Email: \_\_\_\_\_ Phone: \_\_\_\_\_.

C. The close of escrow of the Property, pursuant to the PSA, is \_\_\_\_\_ ("PSA Closing Date").

D. Assignor now desires to assign to Assignee all of its right, title and interest in, to and under the PSA, and Assignee desires to accept such assignment and assume all of the rights, duties and obligations of Assignor under the PSA, subject to and in accordance with the terms and conditions of this Assignment.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Assignment and Assumption of PSA.

A. Assignment. Subject to Assignee's satisfaction of all the terms, covenants, obligations and conditions under this Assignment, Assignor hereby assigns to Assignee all of Assignor's right, title and interest in, to and under the PSA. Without limiting the foregoing, it is the intention of the parties hereto that Assignee shall have and be vested with all of the same rights and benefits conferred upon Assignor in the PSA as though, and to the same extent as if, Assignee had been named the "Buyer" in the PSA.

B. Acceptance and Assumption. Assignee hereby agrees (i) to accept the foregoing assignment, and (ii) from and after the Assignment Effective Date, to assume, keep, perform and fulfill all of the terms, covenants, obligations and conditions required to be kept, performed and fulfilled by "Buyer" under the PSA and Assignee agrees to be bound by all of the terms, covenants, obligations and conditions under the PSA as if Assignee were the original "Buyer" thereto.

Section 2. Purchase Price; Buyer's Premium; Assignment Fee.

A. Purchase Price. Assignee shall pay a total amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the Property (the "Purchase Price"). The Purchase Price includes the sum of (i) the stated purchase price due and payable

to Seller under the PSA (“**PSA Purchase Price**”), (ii) the Buyer’s Premium (as defined below) due and payable to LendingHome (as defined below), and (iii) the Assignment Fee (as defined below) due and payable to Assignor. Without limiting the foregoing, the parties agree that Assignee is also responsible to pay all closing costs that Assignor is responsible to pay under the PSA, as set forth more particularly in Section 4.A. below.

B. **Buyer’s Premium.** Assignee shall pay to either LendingHome Real Estate Network LLC or LendingHome Funding Corporation (“**LendingHome**”), as designated by LendingHome prior to Closing, a buyer’s premium in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (“**Buyer’s Premium**”). The Buyer’s Premium is due and payable pursuant to a separate written agreement between Assignee and LendingHome. As set forth above in Section 2.A, the Buyer’s Premium is part of the Purchase Price and shall be paid by Escrow Holder to LendingHome on the PSA Closing Date. The “Buyer’s Premium” will be referenced as a separate line item on Escrow Holder’s settlement statement.

C. **Assignment Fee.** The assignment fee, if any, due and payable to Assignor by Escrow Holder on the PSA Closing Date in the amount of \$ \_\_\_\_\_ as consideration for this Assignment (the “**Assignment Fee**”) is the difference between (i) the Purchase Price and (ii) the sum of the PSA Purchase Price and Buyer’s Premium.

### **Section 3. Escrow and Assignment Deposit.**

A. Concurrently with the mutual execution and delivery of this Assignment, the parties shall deliver to Escrow Agent a fully executed copy of this Assignment.

B. Assignor and Assignee agree to execute any escrow instructions reasonably required by the Escrow Holder and as otherwise required by the PSA.

C. The parties acknowledge that Assignor has previously deposited with Escrow Holder, as required under the PSA, \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) as a non-refundable earnest money deposit (the “**Earnest Money Deposit**”) toward the purchase of the Property. Along with a copy of this fully executed Assignment, Assignee agrees to deposit with Escrow Holder, within **two (2) business days** of the mutual execution and delivery of this Assignment, its own non-refundable earnest money deposit in an amount equal to the greater of the Earnest Money Deposit or \$2,500.00 (the “**Assignment Deposit**”). Assignee’s failure to make the Assignment Deposit on time shall render this Assignment null and void.

### **Section 4. Closing.**

A. At least **two (2) business days** prior to the PSA Closing Date, or on such earlier date as may be required by the PSA or escrow instructions, Assignee shall deliver to Escrow Agent a cashier’s check, wired funds, or other immediately available funds, acceptable to Escrow Agent, to pay (i) the balance of the Purchase Price (after crediting Escrow Agent’s receipt of Assignee’s Assignment Deposit and any other previously received funds) and (ii) all closing costs that Assignor is responsible to pay under the PSA, including any title or other expenses customarily payable by a buyer in the county where the Property is located. The Earnest Money Deposit shall be returned to Assignor on the PSA Closing Date by the Escrow Holder in connection with close of escrow. Assignee acknowledges that failure to pay the required closing funds by such date shall be construed as a material breach of this Assignment, and the Assignment Deposit shall be subject to forfeiture without notice. Notwithstanding the foregoing, if, following any such breach or failure of Assignee (for any reason other than a default by the Seller) to complete the Closing in the manner and pursuant to the terms of the PSA, Assignor chooses in its sole discretion not to exercise any

rights to effectuate the Closing, Escrow Holder will promptly deliver the Earnest Money Deposit to Seller and the Assignment Deposit to Assignor. Except as otherwise specified herein, the Purchase Price shall be payable strictly in accordance with the terms of the PSA.

B. If the Property is materially damaged or destroyed, wholly or partially, by fire or other casualty prior to closing, or if there is a partial or total condemnation of the Property, Assignee understands that it shall only have the right to terminate this Assignment prior to closing and to receive its Assignment Deposit if and to the extent such right is granted to the "Buyer" under the PSA. Therefore, except for any termination right specifically granted to "Buyer" under the PSA for casualty or condemnation prior to closing, Assignee agrees to complete the purchase of the Property by the PSA Closing Date.

C. It is agreed that TIME IS OF THE ESSENCE with respect to all dates specified in this Assignment, the PSA, and any addenda, riders or amendments to either of them, and Assignee agrees to comply with all deadlines. This means that all deadlines are intended to be strict and absolute.

### **Section 5. Representations.**

A. Assignor represents and warrants to Assignee the following:

1. Assignor has made no other assignment, pledge, hypothecation or other transfer of any of its rights, title and interest as "Buyer" under the PSA.

2. Assignor is fully empowered and duly authorized to enter into this Assignment and this Assignment does not breach or conflict with the PSA or any agreement, resolutions, agreements, indentures, judgments, orders or decrees to which Assignor is a party or otherwise subject. Assignor has received written consent from Seller, as may be required under the PSA, to enter into this Assignment.

3. Assignor is not in default or breach of any of its obligations under the PSA, and to Assignor's knowledge, Seller is not in default or breach of any of its obligations under the PSA. To Assignor's knowledge, no event has occurred and no conditions exist that, with the giving of notice and/or the passage of time, would constitute a default or breach under the PSA.

4. Assignor has provided to Assignee either a full, correct and complete copy of the PSA, or a summary or redacted version of such PSA, as well as copies of any disclosures and other documents provided to Assignor by Seller. Unless otherwise specified in this Assignment, the PSA is in full force and effect and has not been modified, amended or supplemented.

B. Assignee represents and warrants to Assignor the following:

1. Assignee is fully empowered and duly authorized to enter into this Assignment and this Assignment does not breach or conflict with any agreement, resolutions, agreements, indentures, judgments, orders or decrees to which Assignee is a party or otherwise subject.

2. Assignee has been advised to seek independent legal and/or business advice with respect to this Assignment and the PSA, and Assignee has either sought and obtained such advice or deliberately refrained from doing so.

**Section 6. Indemnity.** Assignor shall indemnify, defend and hold Assignee harmless from and against all claims, demands, liabilities, losses, judgments, damages, costs and expenses, including without limitation attorneys' fees and disbursements (collectively, "**Claims**") to the extent arising under the PSA and attributable to the period prior to the Assignment Effective Date. Assignee shall indemnify, defend

and hold Assignor harmless from and against all Claims to the extent arising under the PSA and attributable to the period from and after the Assignment Effective Date.

**Section 7. Compliance with PSA.**

A. If Assignee will use a hard money lender or an IRA, then, upon the written request of Assignor, Assignee shall provide proof of funds reasonably satisfactory to Assignor.

B. This is a legally binding contract. Assignee must have performed ALL due diligence prior to signing this Assignment. Unless otherwise expressly permitted under the PSA, Assignor does not guarantee any walk throughs of the Property after this Assignment is signed and prior to the closing of the escrow.

C. Assignee understands this Assignment is non-cancellable except as expressly provided herein. Assignee agrees to perform all terms and conditions of this Assignment, the PSA and the escrow instructions and to close on time.

D. Notwithstanding any terms or conditions included in the PSA, Assignor has the right to pursue legal action to enforce this Assignment. Forfeiture of the Assignment Deposit under this Assignment or the PSA does not release Assignee from the obligation to close on the Property or liability of Assignee to Assignor for damages associated with a failure to close. Assignor reserves the right to pursue legal action against Assignee to recover any lost profits due to Assignee's failure to perform under this Assignment or the PSA.

E. Assignor's offer to Assignee to assign all of Assignor's right, title and interest in, to, and under the PSA is not considered accepted until this document is signed by both Assignee and Assignor.

F. Assignor has provided a copy of the PSA to LendingHome and Assignee agrees to assume such PSA, subject to the terms and conditions hereunder.

**Section 8. Miscellaneous**

A. **Successors and Assigns; Assignment.** The provisions of this Assignment shall be binding upon, and shall inure to the benefit of, the successors and assigns of Assignor and Assignee, respectively. Assignee acknowledges that it may not assign this Assignment to any other party without the express written consent of both Assignor and LendingHome.

B. **Integration.** This Assignment, together with the PSA, contains and embodies the full and complete understanding of the parties with regard to assignment and assumption of the PSA, including any and all representations, covenants, conditions and warranties; and no other agreements, understandings, representations, covenants, conditions or warranties have been made or relied upon in entering into the Assignment. All prior discussions and negotiations regarding the assignment and assumption of the PSA have been and are merged and integrated into, and are superseded by, this Assignment and the PSA.

C. **Governing Law and Choice of Forum.** This Assignment shall be construed in accordance with and governed by the internal laws of the state where the Property is located, without giving effect to any "conflict of law" rules of such state. Assignor and Assignee each acknowledge and agree that the Superior Court of the State where the Property is located in and for the county where the Property is located and the associated federal and appellate courts shall have exclusive jurisdiction to hear and decide any dispute, controversy or litigation regarding the enforceability or validity of this Assignment or any portion thereof.

D. **Paragraph Headings.** The paragraph headings in this Assignment are for convenience of reference only and shall not limit or otherwise affect the meanings of those paragraphs.

E. **Counterparts/Electronic Signatures.** This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. Faxed, e-mailed or photocopied signatures of this Assignment shall be deemed original signatures for all purposes.

F. **Attorneys' Fees.** In the event of litigation to enforce or to interpret this Assignment, the prevailing party shall be entitled to recover, in addition to all other sums and relief, its reasonable costs and attorney's fees.

G. **Costs.** Except as otherwise specified in this Assignment, each party hereto shall pay all of its own costs and expenses incurred in connection with the transactions contemplated hereunder, including, without limitation, any fees and costs of its attorneys, accountants and any other advisors.

**Section 9. Additional Agreements.**

**ASSIGNEE AND ASSIGNOR ACKNOWLEDGE AND AGREE THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY INCLUDED IN THIS ASSIGNMENT OR PSA, LENDINGHOME (1) IS NOT REPRESENTING, AND SHALL NOT BE DEEMED TO REPRESENT, ASSIGNEE OR ASSIGNOR AS A BROKER, AGENT, FIDUCIARY OR IN ANY OTHER CAPACITY IN THE TRANSACTION CONTEMPLATED IN THIS ASSIGNMENT OR THE PSA, (2) HAS NO DUTIES OR OBLIGATIONS TO EITHER ASSIGNEE OR ASSIGNOR UNDER THIS ASSIGNMENT AND THE PSA AND (3) SHALL HAVE NO LIABILITY (WHETHER IN TORT, CONTRACT OR EQUITY) UNDER THIS ASSIGNMENT OR THE PSA.**

IN WITNESS WHEREOF, this Assignment includes ALL pages of this Assignment, including any addenda, modifications or riders hereto.

**ASSIGNOR:**

Entity \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**ASSIGNEE:**

Entity \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

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