

# CLOSING GUARANTEE AGREEMENT

**THIS IS A LEGALLY BINDING AGREEMENT. IT IS RECOMMENDED  
THAT YOU CONSULT A LAWYER BEFORE EXECUTING IT.**

This agreement ("**Agreement**") dated as of \_\_\_\_\_ (the "**Effective Date**"), is entered into by and among HOMESTEAD FUNDING CORP., a New York Corporation, with offices located at 8 Airline Drive, Albany, NY 12205 ("**Homestead**"), and \_\_\_\_\_, an individual, presently residing at \_\_\_\_\_ (the "**Buyer**" and, together with Homestead, the "**Parties**");

Whereas, Buyer has applied for residential mortgage loan financing through Homestead, and has been pre-approved by Homestead under the terms of the Pre-Approval Letter;

Whereas, Homestead—as evidence of its confidence in its approval and pre-approval process—intends to provide a Closing Guarantee ("**Guarantee**") to the Seller of the improved real property herein described (the "**Property**");

Whereas, the Guarantee, subject to the conditions of this Agreement, provides that Homestead shall pay Seller in an amount of \$5,000.00 in the event that Buyer does not close on or before the contracted close date as specified on the Purchase and Sale Contract ("**Contract**"), which date shall not be less than 25 calendar days from the date of execution of the Contract;

Whereas, Buyer submits this Guarantee for the purposes of inducing the Seller to accept Buyer's submitted offer;

Whereas, Homestead offers this Guarantee in reliance on Buyer's performing, in a timely manner, all necessary actions required by Homestead to underwrite Buyer's Loan prior to the closing date.

NOW, THEREFORE, in consideration for the mutual promises contained herein, the sufficiency of which is hereby acknowledged, and in consideration of the covenants and agreements herein set forth, the Parties agree performance shall be conditioned as follows:

## SECTION ONE

1. Personal Residence. Buyer seeks to purchase the Property as described in the Contract with the intention of using it as Buyer's primary personal residence.

2. Buyer's Information. Buyer warrants that all documentation and information provided to Homestead in conjunction with Homestead's preapproval and approval processes, previously, now and hereafter, is true and accurate.

3. Choice of Lender. This Agreement shall be unenforceable should Buyer choose not to engage Homestead to obtain financing for the purchase of the Property, and agrees further to: (a) apply for Buyer's mortgage loan within three (3) days of the date hereof; and (b) immediately upon Homestead's request, execute and provide all documents as may be required to effectuate the approval and clearance of Buyer's mortgage loan with Homestead.

4. Credit Impairment. Buyer will not undertake any action which, in Homestead's sole discretion, may be detrimental to Buyer's credit or otherwise do any act or fail to act in such a manner that would otherwise impair Buyer's ability to obtain a loan based on Homestead's guidelines at any time during the transaction. For illustration purposes, any significant purchase made by Buyer on credit during the pendency of the transaction would be considered such detrimental action; however, this is intended to be merely illustrative, and there are many other circumstances that could detrimentally affect the Buyer's ability to obtain a loan.

5. Terms of Guarantee. Notwithstanding any contrary language herein, Homestead will perform under this Agreement only if each of the following conditions is satisfied: (1) the loan closing fails to take place after Homestead has determined that Buyer satisfies Homestead's internal underwriting requirements to be deemed a qualified borrower; (2) a Pre-Approval Letter has been provided to the Buyer by Homestead; and (3) the loan closing does not occur solely due to delay attributable to Homestead.

6. Transaction Eligibility. The following requirements must be satisfied to ensure eligibility of Buyer and Seller under the Guarantee:

6.1 Seller must be the record owner and seller of the Property;

6.2 Buyer must complete and submit to Homestead a new residential first-lien loan application for the purposes of obtaining a mortgage loan from Homestead;

6.3 Buyer and Seller must provide a fully executed Contract, which must include all pages, addenda, and required signatures;

6.4 Buyer and an authorized Homestead representative must sign this Guarantee;

6.5 Buyer shall have previously submitted all necessary pre-approval documents as requested by Homestead for the purposes of determining Buyer's qualification for a loan, and Buyer must have received: (1) a Pre-Approval Letter, prior to entering into the Contract; and (2) a Certificate of Loan Guarantee from Homestead;

6.6 Buyer must, and will continue to, submit accurate information on the loan application, which means that such information is accurate and does not contain fraudulent information or material misrepresentations;

6.7 Buyer must satisfy all loan and loan program requirements and conditions at least seven (7) business days prior to the anticipated closing date;

6.8 Property must be eligible for the specified loan product and must appraise at an amount not less than the Contract price. In the event the Property appraises for less than the Contract price, Buyer must be willing to provide liquid funds to cover any gaps in the appraisal valuation; and

6.9 Homestead must be provided satisfactory title insurance coverage showing Buyer as the insured owner of the Property and insuring the loan and not containing any exceptions, exclusions or conditions that are not acceptable to Homestead.

## **SECTION TWO**

7. **Conditions of Default.** Notwithstanding the foregoing, the occurrence of any of the following events will nullify the Guarantee:

7.1 A violation of any of the conditions set for in Section One herein;

7.2 A change in the loan amount, product, or terms that reasonably require additional time to clear the file to close;

7.3 Failure by either Buyer or Seller to satisfy Contract terms and requirements, including delays caused by or related to Seller and/or Buyer;

7.4 Delays due to force majeure events, including, but not limited to, weather, natural disaster, pandemic, strikes, war, or any other public declaration of emergency;

7.5 Delays caused by third parties other than Homestead's required service providers;

7.6 Delays due to Borrower's failure to respond to Homestead's request within two (2) business days;

7.7 Failure to make a claim under this Guarantee within thirty (30) days of all Conditions Precedent having been satisfied;

7.8 Any actions that would render payment under the Guarantee legally prohibited, including, but not limited to, bankruptcy or regulatory changes;

7.9 Homestead, in its sole discretion, declines the loan after the loan has been pre-approved due to detrimental actions of the Buyer;

7.10 Buyer voluntarily withdraws the loan application; and

7.11 Seller cancels the contract, for any reason.

8. **Exclusions.** The following mortgage loan transactions are not eligible for the Guarantee:

8.1 Refinance loans;

8.2 The mortgage loan requires any subordination of a loan or lien;

8.3 A loan applicant who has disputed credit accounts;

8.4 A loan involving property requiring repairs or re-inspection; or

8.5 A loan involving property which is new construction, a co-op, a bank-owned property, or a home purchased through a short sale; or

8.6 A loan product that requires underwriting by a third party.

### **SECTION THREE**

9. **Waiver.** Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in writing by the party waiving such term or condition. No waiver by any party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, will be cumulative and not alternative.

10. **Interpretation.** No provision in this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

11. **Counterparts.** This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which together shall constitute one and the same Agreement.

12. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the parties hereto, their officers, directors, agents, employees, affiliates, subsidiaries, predecessors, successors, heirs, legal representatives and assigns.

13. **Relationship of Parties.** This Agreement is made for the sole benefit of the parties hereto and or their respective successors and permitted assigns. Except as otherwise expressly provided in this Agreement, nothing herein shall create, or be deemed to create a relationship between the parties hereto, or any of them, and any third person in the nature of a third-party beneficiary, equitable lien or fiduciary relationship.

14. **Prefatory Paragraphs.** The prefatory paragraphs of this Agreement are intended by the Parties to be a substantive part of the Agreement and be binding and legally enforceable on the Parties and therefore shall be interpreted consistent with this intent.

15. **Time of the Essence.** Time will be of the essence as it relates to the obligation's incumbent on the Buyer under this Agreement.

16. **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

17. **Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

18. **Entire Agreement.** This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

19. Amendment and Modification. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. Notwithstanding the foregoing, only an officer of Homestead shall have authority to sign any amendments, modifications, or supplements related thereto.

20. Assignment. Neither party may assign any of its rights hereunder without the prior written consent of the other party.

21. Governing Law. This Agreement and all related documents and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, construed in accordance with, and enforced under the laws of the State of New York, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of New York

22. Submission to Jurisdiction. Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be instituted in either the United States District Court for the Northern District of New York, or New York State Supreme Court located in the County of Albany, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement as of the date first written above.

BUYER

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

Name:

HOMESTEAD FUNDING CORP.

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

Name:

Title: