

COMMISSION ADVANCE AGREEMENT (the "AGREEMENT")

**Brokerage Information (the "Brokerage"):**

Brokerage: \_\_\_\_\_

Broker: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

**Agent Information (the "Agent"):**

Name: \_\_\_\_\_

Contact Email: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email to Fund: \_\_\_\_\_

(if different from agent email)

**Property Information:**

Address: \_\_\_\_\_ MLS Number: \_\_\_\_\_ Sale Amount: \_\_\_\_\_

Commission Amount: \_\_\_\_\_ Closing Date: \_\_\_\_\_ Condition Waiver Date: \_\_\_\_\_  
mm/dd/yyyy mm/dd/yyyy

**Advance Details – For Completion by Agent and Brokerage**

a) Request Date: (TODAY if submitted before 1:00 pm, MST NEXT BUSINESS DAY if submitted after 1:00 pm, MST):	mm/dd/yyyy
b) Amount Requested:	
c) Repayment Date (Closing Date + 14 days):	
d) Days Borrowing:	
e) Interest (24% APR):	
f) Advance Fee (incl. GST):	
g) Cost of Borrowing (Interest + Advance Fee):	
h) Amount Advanced (Amount Requested - Cost of Borrowing):	

- We confirm that the Subject Purchase and Sale Agreement is unconditional, and the full deposit has been paid.
- The Brokerage and Agent promise to fully pay the Amount Requested from all Commissions, ordinarily payable to the Agent, before Brokerage pays any further Commissions to Agent; have not accepted a loan repayable from Commissions and will not accept any such loan until the Amount Requested is paid to the Lender in full; and Brokerage and Agent acknowledge, accept and agree they are bound to, and will strictly comply with, this Agreement including, without limitation, the Schedule "A" Terms and Conditions.
- The Brokerage and Agent acknowledge, understand and agree that the advance of the Amount Advanced remains subject to the Lender's acceptance, at the Lender's sole and unfettered discretion, and the Lender may consider anything it deems appropriate, including whether the Amount Requested meets the Lender and legislated requirements.

**Repayment Summary:**

Repayment Date:	Repayment Amount:
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**IN WITNESS WHEREOF** the Agent and Brokerage have executed this Agreement and agree to be bound by its terms.

SIGNED by Agent: \_\_\_\_\_

SIGNED by BROKER: \_\_\_\_\_

**SCHEDULE "A" – TERMS AND CONDITIONS OF LOAN**

## 1. Definitions:

- (a) "**Actual Repayment Date**" means the date on which the Amount Requested is fully paid to Lender;
  - (b) "**Additional Interest**" means the interest, at the same rate as the Calculated Interest, but not originally included in the Amount Requested as set out in the Advance Details, running from the original Specified Repayment Date up to and including the Actual Repayment Date;
  - (c) "**Advance Fee**" means the fee imposed by the Lender related to providing the Amount Advanced, as specified in section (f) of the Advance Details and included in the Amount Requested;
  - (d) "**Agent**" shall have the meaning set forth on the first page of this Agreement;
  - (e) "**Agreement**" means this Commission Advance Agreement;
  - (f) "**Amount Advanced**" means the amount advanced by the Lender to the Agent on the Request Date, set-out at (h) of the Advance Details, being the Amount Requested minus the Calculated Interest and Advance Fee;
  - (g) "**Amount Requested**" means the funds to be paid by the Brokerage and Agent, to the Lender, which includes the Amount Advanced, the Advance Fee and Calculated Interest, as set out in the Advance Details, plus all Additional Interest, if any, not reflected in the Advance Details, added if repayment does not occur on the Specified Repayment Date;
  - (h) "**Brokerage**" shall have the meaning set forth on the first page of this Agreement;
  - (i) "**Calculated Interest**" means the interest, at the rate stipulated in the Advance Details, calculated at (e) in the Advance Details and included in the Amount Requested, running from the Request Date to the Specified Repayment Date;
  - (j) "**Closing Date**" means the date the transaction under the Subject Purchase and Sale Agreement is to be completed and funds and property exchanged between purchaser and seller;
  - (k) "**Commissions**" means all amounts owing to the Agent with respect to Purchase and Sale Agreements on or subsequent to the Specified Repayment Date, until the Amount Requested is fully repaid to Lender;
  - (l) "**Default(s)**" shall have the meaning ascribed in Section 5 herein;
  - (m) "**Information**" means all material requested by the Lender, and provided by the Agent and Brokerage;
  - (n) "**Lender**" means AREA Real Estate Services Corporation;
  - (o) "**Purchase and Sale Agreement**" means any agreement for the purchase or sale of property upon which Commissions are payable and includes the Subject Purchase and Sale Agreement;
  - (p) "**Request Date**" means the date which the Lender deposits the Amount Advanced to Agent;
  - (q) "**Specified Repayment Date**" means the repayment date specified for repayment of the Amount Requested, as stipulated at (c) in the Advance Details, as may be extended, with corresponding increase to the Amount Requested, should the Closing Date be delayed; and
  - (r) "**Subject Purchase and Sale Agreement**" means the Purchase and Sale Agreement upon which the Amount Advanced was advanced and the Commissions from such agreement are to be used to pay the Amount Requested.
2. For the consideration of the Amount Advanced, and other covenants herein, the Agent and Brokerage agree to pay the Amount Requested and Agent hereby irrevocably assigns, and directs the Brokerage to pay, the Commissions to the order of the Lender, until the Amount Requested is paid in full, before Commissions are payable to the Agent again.
3. Each of Agent and Brokerage represent, warrant and agree:
- (a) the Lender is under no obligation to advance the Amount Advanced;
  - (b) this request for Amount Advanced is confidential, and its terms shall not be disclosed by Brokerage or Agent to any person other than their officers, directors, employees, accountants, legal counsel and other advisors, on a "need to know" and confidential basis;
  - (c) to always act in good faith;
  - (d) the Agent is a licensed agent, in good standing and has no fees, dues or deductions owing to the Brokerage;
  - (e) the Brokerage or Agent may be required to supply, or confirm, Information on, provided by, or relating to the Brokerage; the Agent; Commissions; status; financials; transactions; or otherwise, which Agent or Brokerage, as applicable, will fully and accurately provide or confirm within one business day of any request for such Information or confirmation from the Lender, and the Agent and Brokerage will not dispute any such Information being requested by, or provided to, the Lender either by them directly or about them from the other party;
  - (f) all Information submitted to the Lender is correct, and authorize the Lender to request, collect, verify and confirm Information, required by the Lender under this Agreement, from, or with, any persons;
  - (g) they face the risk of prosecution for any misrepresentation, false Information, negligence, breach or fraud
  - (h) to advise the Lender of any change or inaccuracy in Information in one business day from discovering same;
  - (i) not provide to the Lender any personal Information of any real estate buyer or seller, including their name, address, phone, fax and email without such persons' consent;
  - (j) the Commissions are free and clear of any charge, lien or encumbrance, and are payable only to the Agent;

- (k) to pay the Amount Requested to the Lender, by irrevocably assigning the Commissions to the Lender until the Amount Requested has been paid in full, and before any Commissions will again be payable to the Agent;
  - (l) there is no other loan payable from Commissions, and they will not accept any such loan until the Amount Requested is paid to the Lender, in full;
  - (m) to pay the Amount Requested by the Specified Repayment Date;
  - (n) notify the Lender promptly in the event that the Closing Date is delayed, and complete any amending or extension documentation that the Lender may reasonably require, and unless a Default is triggered, Agent and Brokerage acknowledge the requirement that the Amount Requested, as adjusted based on the delay, is to be paid from the Commissions, with Specified Repayment Date being adjusted accordingly;
  - (o) in the event the Amount Requested is not paid in full on the Specified Repayment Date, as adjusted, for any reason, the Amount Requested shall automatically occur from the Commissions, until the Amount Requested is paid in full, unless alternate payment requirements are imposed based on Default, under Section 6 herein; and
  - (p) notify the Lender immediately in the event that any problems, issues, or complications arise with payment of the Amount Requested by the Specified Repayment Date, the Subject Purchase and Sale Agreement or any Commissions.
4. The Lender may assign its position under this Agreement without the consent of the Agent or Brokerage. Neither the Agent or the Brokerage shall assign this Agreement or be released of their obligations under this Agreement until the Amount Requested is paid in full.
5. “Default(s)” shall mean any of the following:
- (a) if the Amount Requested is not paid in full on the Specified Repayment Date;
  - (b) at the option of the Lender, if the Closing Date is delayed by more than 60 days from that specified on page 1 of this Agreement;
  - (c) if either Agent or Brokerage should default or be in breach of this Agreement or any part hereof or any collateral or supplemental agreement hereto;
  - (d) if any representation or warranty made, or Information provided, by either Agent or Brokerage with respect to this Agreement is found to be incorrect, untrue or misleading;
  - (e) this Agreement is declared void, voidable or otherwise unenforceable by the Lender;
  - (f) if Agent is no longer associated with the Brokerage at any time, for any reason, before the Amount Requested is paid in full;
  - (g) if either Agent or Brokerage makes an assignment for the benefit of creditors or be declared bankrupt, or if a custodian, receiver, a receiver and manager or other officer with similar powers be appointed with respect to the Agent or Brokerage or any of their property or if the Agent or Brokerage makes or files a notice of intention to make a proposal or otherwise takes advantage of provisions for relief under the *Bankruptcy and Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada), or such similar legislation now or hereafter in force or makes any arrangement with its creditors pursuant to the terms of the *Business Corporations Act* of the jurisdiction of organization as now or hereafter in force;
  - (h) if the Agents or Brokerage passes or purports to pass any resolution or takes or purports to take any proceedings which would result in its reorganization, amalgamation or merger with another entity or the transfer of all or substantially all of its assets, or take proceedings for its dissolution or liquidation;
  - (i) if an event or circumstance has occurred which has had, or could reasonably be expected to have, a material adverse effect on the assets or prospects of the Agent or Brokerage, which has not been approved, in advance, by the Lender in writing; or
  - (j) if in the opinion of the Lender, any adverse change has occurred in the financial condition or business of the Brokerage or Agent which may impair their ability or willingness to perform any of their obligations to the Lender.
6. In the event of any of the above Default(s), Agent and Brokerage acknowledge that the Lender shall have the following rights, which are cumulative, where the exercise of one right is not at the exclusion of another, and the following are in addition to, not in substitution of, the rights that exist for the Lender under contract, at law or in equity:
- (a) continue to collect the Amount Requested remaining unpaid, and all enforcement costs, from all Commissions payable to the Agent, until the Lender is paid in full;
  - (b) the whole of the Amount Requested remaining unpaid, and all enforcement costs, shall be accelerated and become immediately due and payable by the Agent, and Lender is at liberty to collect the amount from the Agent directly;
  - (c) only in the event the Default was caused or contributed to by the Brokerage, the whole of the Amount Requested remaining unpaid, and all enforcement costs, shall be accelerated and become immediately due and payable by the Brokerage; and
  - (d) the Lender shall be entitled to offset any amount that is owed to the Lender, including without limitation, payment of the Amount Requested, against any amounts otherwise payable from the Lender to the Brokerage.
7. Any payment of monies hereunder shall be made in Canadian funds.
8. Payments from the Brokerage or Agent to the Lender shall be via: a) electronic funds transfer, to the account designated by the Lender; or b) another method as determined by the Lender, and communicated by the Lender to the Brokerage or Agent from time to time.
9. The Amount Advanced will be sent to the Agent via email

money transfer or electronic money transfer to the Agent's bank account. Lender cannot guarantee the date the Amount Advanced will be advanced but will endeavor to send or deposit the funds on the Request Date.

10. Any notice required to be given under this Agreement may be given to the Agent or the Brokerage by email, to the addresses provided in the Brokerage and Agent Information sections herein, or by registered mail to the Brokerage registered address. In the case of the Lender such notice shall be sent to the Lender via email, as follows:

Email: [areaadvance@albertarealtor.ca](mailto:areaadvance@albertarealtor.ca)

Notices sent via registered mail shall be deemed to have been received five business days after the mailing thereof. Notices sent via email shall be deemed to have been received the day it is emailed, provided that such day is a business day and the communication is delivered prior to 4:30pm on such day. Otherwise, it shall be deemed to be made and received the next following business day.

11. The clauses and paragraphs contained in this Agreement are intended to be read and construed independently of each other. If any term covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, it is the parties' intent that such provision be reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable and the remainder of the provisions of this Agreement will in no way be affected, impaired or invalidated as a result.
12. This Schedule "A" Terms & Conditions are subject to change by the Lender without notice.
13. This Agreement, and any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation, including any non-contractual disputes or claims, will be exclusively governed by and construed in accordance with the laws of the Province of Alberta, and the laws of Canada applicable therein, excluding conflict of law rules and choice of law principles that provide otherwise. Notwithstanding anything to the contrary, and regardless of law being applied, the parties irrevocably agree that the courts of the Province of Alberta shall be the exclusive forum to settle and resolve any dispute or claim between the parties, arising out of or in connection with the Agreement or its subject matter or formation, whether in tort, contract, under statute or otherwise, including any question regarding its existence, validity, interpretation, breach or termination. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the Province of Alberta, agrees to bring any dispute or claim only in such forum, and further agrees that a final determination of any dispute or claim is conclusive and enforceable.
14. All costs, expenses and expenditures including, without limitation, the complete legal costs as between a solicitor and his own client on a full indemnity basis incurred by Lender in enforcing this Agreement, both before or after Default by Agent or Brokerage, will be immediately due and payable, together with, and in the same manner as the Amount Requested.
15. The Parties acknowledge and agree that if any date for payment of monies hereunder or fulfillment of any obligation hereunder shall fall on a Saturday, Sunday or statutory holiday such date for the payment of such monies or fulfillment of

such obligation hereunder shall be deemed postponed and extended to the next following business day.

16. This Agreement will pass to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns of the Agent, the Brokerage and Lender.
17. This Agreement, excluding these Schedule "A" Terms and Conditions which are subject to change under Section 12, may only be amended or modified by a written instrument executed by Agent, Brokerage and the Lender.
18. The failure of Lender to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision nor in any way to affect the validity of this Agreement or any part. No waiver shall be inferred from or implied by anything done or omitted to be done by Lender unless such waiver is expressed in writing. No delivery by Brokerage or Agent or acceptance by Lender of a partial payment towards the Amount Requested shall be deemed to be or construed as acceptance of the lesser amount in full satisfaction of the entire Amount Requested or a termination of this Agreement. No waiver of any Breach of this Agreement shall be held to constitute a waiver of such continued Breach or any other or subsequent Breach.
19. This Agreement constitutes the entire agreement between the parties and there are no further items or provisions, oral, written or otherwise.
20. The Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument and delivery of same may occur via the exchange of PDF copies by electronic transmission. The several counterparts and electronic transmissions when combined shall constitute a firm and binding Agreement.