



## Lender-Mortgage Broker Agreement

THIS AGREEMENT is made on the date below shown by and between WASHINGTON FEDERAL SAVINGS ("**Lender**") and \_\_\_\_\_ ("**Broker**").

**1.00 DEFINITIONS.** The following definitions apply to this Agreement:

**1.01 "*Applicant*"** means any person(s) seeking (a) mortgage loan(s) who apply directly to Broker and whose applications(s) may later be presented to Lender by Broker for Lender's consideration.

**1.02 "*Application*"** means any written loan underwriting package regarding an Applicant which is prepared and presented by Broker on behalf of Applicant and which may be submitted to Lender by Broker for Lender's consideration. For purposes of this definition, each loan underwriting package shall include all written documentation necessary for Lender to make a thorough underwriting analysis and decision concerning each Applicant whom it is being asked to consider.

**1.03 "*Broker*"** means Broker and its employees, officers, directors, shareholders, agents, heirs, successors and assigns.

**1.04 "*Lender*"** means Lender and its employees, officers, directors, shareholders, successors, and assigns.

**1.05 "*Submission*," "*submit(s)*" or "*submitting*"** means the act of Broker submitting an Application for consideration by Lender of any other Lender.

**1.06 "*Approve(s)*," "*approval*," "*approving*" or "*approved*"** means the act of Lender making a written loan commitment regarding Applicant.

**1.07 "*Denial*," "*denying*," "*deny*," or "*denied*"** means the act of Lender communicating to Broker that an Application has been rejected after formal consideration.

**1.08 "*Counter-offer*" or "*counter-offered*"** means the act of denying an Application based on the terms originally applied for and offering the same Applicant a loan based on other terms and conditions.

**1.09 "*Fund(s)*," "*funding*," or "*funded*"** means the act of making a loan to Applicant after all conditions precedent to its disbursement, as set forth in an approval and escrow instructions, have been satisfied.

**1.10 "*Claim*"** means any claim, demand, cause of action, cross-claim, counterclaim, third party complaint, affirmative defense, demand for set off or contribution, or subrogation claim, or any criminal prosecution, or civil or administrative action by a government authority, and any losses, liability or penalties resulting therefrom.

**1.11 "*Yield Spread Premium (YSP)*"** means the amount payable by Lender to Broker, as set forth in Lender's Wholesale Lending Rate Schedule.

Broker's Initials \_\_\_\_\_

**2.00 NATURE OF LENDER - BROKER - APPLICANT RELATIONSHIP.** Broker agrees to submit to Lender from time to time and in their mutual discretion, mortgage loan applications according to the terms and conditions of this Agreement. Lender and Broker agree that, except as set forth in Section 8.00 of this Agreement, the relationship of Lender and Broker shall be arm's length, and in this regard, Lender and Broker further agree as follows:

**2.01 *Broker Not An Agent.*** Broker agrees and warrants unto Lender and any future Applicant who transacts with Broker that, except as set forth in Section 8.00 of this Agreement, Broker is not an agent for or acting on behalf of Lender, but rather is acting for Broker or on behalf of Applicant only, and accordingly, Broker shall hold harmless and indemnify, protect and defend Lender from any Claim for any act or omission of Broker not identified in Section 8.00 of this Agreement.

**2.02 *Application Submission & Disposition.*** Broker may, from time to time and in its own discretion, submit an Application of an Applicant to Lender for Lender's consideration. After submission of an Application by Broker to Lender, Lender may review the Application, and in its own discretion, approve or deny it, or make the Applicant a counter-offer. If the Application is approved and all conditions of the approval, as contained in a loan commitment and escrow instructions, have been accepted by Applicant and performed, Lender shall fund a loan to an Applicant as approved. If a counter-offer is made and all conditions of the counter-offer, as contained in a loan commitment and escrow instructions, have been accepted by Applicant and performed, Lender shall fund a loan to an Applicant as approved.

**2.03 *Hold Harmless & Indemnity.*** Until Broker makes a submission on behalf of an Applicant, Lender is under no duty or obligation to that Applicant whatsoever, whether under statute, administrative regulation or common law, and Broker shall hold harmless and further indemnify, protect and defend Lender from any Claim of an Applicant arising from any act or omission of Broker concerning any Application submitted to Lender. Broker warrants unto lender that Broker will inform every Applicant, from whom an Application is taken and submitted to Lender, that Lender (1) may in its own discretion deny a submitted Application and (2) is under no duty or obligation to fund a loan to Applicant unless a loan commitment has been made, all of its conditions (including escrow instructions) have been fulfilled and the Applicant has accepted the loan commitment in a timely manner.

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**3.00 COMPLIANCE WITH GENERAL MORTGAGE LENDING LAWS AND REGULATIONS.** Broker warrants unto Lender that, in any Application it submits to Lender, Broker shall comply with all applicable federal and state statutes and regulations (as now or in the future amended) affecting mortgage lending, including but not limited to the following:

- a. Any mortgage broker's practices act of the state in which the property that is security for any and all mortgage loans to be originated by Lender incident to this Agreement.
- b. The Federal Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 C.F.R. 226.
- c. The Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq., and Regulation X, 24 C.F.R. 3500.
- d. The Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq., and Regulation B, 12 C.F.R. 202.
- e. The Fair Housing Act (Title VIII of Civil Rights Act of 1968, as amended), 42 U.S.C. 3601 et seq.
- f. The Howowners Protection Act, 12 U.S.C. 4901.
- g. The Fair and Accurate Credit Transactions Act of 2003 (FACT Act), 15 U.S.C. 1601 et seq. and 20 U.S.C. 9701 et seq.
- h. The Privacy of Consumer Financial Information and Regulation P, 12 CFR 216.
- i. The USA Patriot Act of 2001 Public Law 107-56 et seq.
- j. The Right to Financial Privacy Act 12 USC 3401 et seq. and 12 C.F.R.219.
- k. Any other federal or state consumer protection law or regulation.
- l. All appraisal laws and regulations identified in subsection 5.01 below.

Broker shall hold harmless and indemnify, protect and defend Lender from any Claim arising from any breach of this warranty by Broker.

**4.00 COMPLIANCE WITH LICENSING LAWS AND REGULATIONS.** Broker warrants unto Lender that, in any Application it submits to Lender, Broker has a license or licenses in good standing with the applicable state or states authorizing conduct involving any Application now or in the future submitted to Lender, including but not limited to any mortgage broker licensing law or the like. Broker shall have a continuing duty to provide Lender with written notice of any applicable license of Broker or change in the status of Broker's license, and Lender, without advance notice to Broker, may require proof to Lender's satisfaction of Broker's good standing as a licensee prior to submission of any Application, or in the alternative, proof of any exemption from any licensing law. Broker shall hold harmless and indemnify, protect and defend Lender from any Claim against Lender arising in whole or in part from Broker failing to comply in any manner with any applicable licensing laws or regulations.

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## **5.00 COMPLIANCE WITH APPRAISAL LAWS AND REGULATIONS.**

**5.01 *Appraisal-Related Requirements.*** All appraisals and appraisal forms shall comply with (1) all state and federal appraisal criteria, (2) standards and requirements applicable to Lender, and (3) the appraisal rules and regulations contained or incorporated in and adopted pursuant to the federal Financial Institutions Reform, Recovery, and Enforcement Act ("*FIRREA*"). All appraisers shall meet all state and federal certification, licensing and other criteria, standards and requirements applicable for appraisers providing appraisals to Lender, including but not limited to those contained or incorporated in or otherwise required by FIRREA or the rules and regulations adopted pursuant to FIRREA.

**5.02 *Lender Approval of Appraisal Forms.*** Lender reserves the right to review and approve all appraisal forms, and reserves the right to require that its forms be used.

**6.00 LOAN SALE COMMITMENTS.** Lenders approval of an Application by written loan commitment shall be deemed an agreement by Lender to fund and purchase a mortgage loan, subject to the terms and conditions of this Agreement and the written loan commitment and escrow instructions.

**7.00 TERMS OF BROKER COMPENSATION.** Unless otherwise modified by Lender and Broker in writing, Broker shall be entitled to a commercially reasonable loan fee as negotiated between Lender and Broker on each Application; provided, however, that Broker shall not have earned or be entitled to such fee or any remuneration unless Lender is obligated to fund a loan pursuant to the fulfillment or written waiver or modification by Lender of all conditions for funding as set forth in a loan commitment and escrow instructions.

**7.01 *Maximum Broker Compensation.*** Maximum compensation to Broker cannot exceed a total of 3.5% of loan amount including YSP paid by Lender, Loan Origination Fee, Discount, and any other miscellaneous non-third party costs.

**7.02 *Yield Spread Premium (YSP).*** In the event a YSP is payable, it will be paid to Broker by Lender only upon the loan funding with Lender. Lender will require from the Broker a full return of the YSP for any loan that pays off within 180 days of the date the loan was funded by Lender. Lender will provide the Broker with the borrower's name, property address, loan number, loan amount and YSP repayment amount. The Broker will have 15 days from Lender's notification to remit the full amount due. Failure to do so will result in termination of the entire Lender-Mortgage Broker Agreement and entitle Lender to pursue collection of the YSP from the Broker.

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**8.00 LIMITED AGENCY AGREEMENT.** Lender designates Broker as Lender's agent for the following limited and exclusive purposes;

**8.01 *Locked-In Interest Agreements and Deposits.*** In the event an Applicant has a Locked-In Interest Agreement (or similar agreement) with Lender for the "locking-in" of an interest rate for a fixed period of time, Lender designates Broker as Lender's agent for the purpose of holding any "lock-in deposit" in trust for the benefit of Lender, and Broker shall hold such sums in trust and make accounting to or apply the funds for Lender as Lender shall direct. Lender designates Broker as Lender's agent for the purpose of negotiating and arranging Locked-In Interest Agreements and Deposits with Applicants, in which Applicants remit Deposits to "lock-in" specific interest rates or "float down" rates with Lender for a definite period of time. Lender reserves the right to cancel the agency power of Broker to negotiate and arrange Locked-In Interest Agreements and Deposits, and such cancellation may occur for any reason and at any time, including but not limited to Lender's sole determination that Broker has failed to honor any Locked-In Interest Agreement made with an Applicant. Notwithstanding the above, Broker shall hold harmless Lender from any act or omission of Broker resulting in an Applicant being unfairly or improperly denied the benefit of a Locked-In Agreement, and Broker shall indemnify and defend Lender from any claim arising from such act or omission of Broker. Lender designates Broker as agent and trustee for holding any Locked-In Interest Deposits obtained from Applicants, and Broker shall hold such sums in trust and dispose of them only at the direction of Lender. Broker shall be liable to Lender for any misappropriation of Locked-In Interest Deposits to which Lender is entitled, and Broker shall indemnify, protect and defend Lender from any Claim for misappropriation of such deposits by Broker. Broker warrants unto Lender compliance with Lender's Policy on Locked-In Interest Agreements, subject to written notice from Lender of its contents as may be modified by Lender.

**9.00 LOAN PARAMETERS FOR BROKER SUBMISSIONS.** From time to time Lender shall publish and deliver program descriptions and Loan Parameters Standards of Lender for all Broker submission of Applications. The Loan Parameters Standards for Broker Submissions shall at the time of their publication or later amendment and without advance notice to Broker become incorporated by reference in this Agreement as if already herein set forth, and Broker hereby warrants unto Lender compliance with the Loan Parameters Standards and shall further hold harmless and indemnify, protect and defend Lender from any Claim arising from any act or omission of Broker which constitutes (a) a breach of the Loan Parameter Standards, (b) a material misrepresentation of the Loan Parameter Standards to any Applicant or other third party, and/or (c) the discriminatory or otherwise inequitable or inconsistent application of the Loan Parameter Standards to Applicants. Lender may periodically amend the Loan Parameter Standards and without advance notice to Broker, and the Loan Parameter Standards as so amended shall be in effect as of the beginning of the business day on the date of publication of such amendment.

Broker's Initials \_\_\_\_\_

**10.00 MISCELLANEOUS.**

**10.01 *Complete Agreement.*** Subject to the terms of individual loan commitments and escrow instructions and the Loan Parameter Standards or any other policy of which Broker has written notice, this Agreement shall represent a full and complete understanding as between Lender and Broker, and no prior or contemporaneous oral statement of either Broker or Lender, and no prior or contemporaneous oral statements of either Broker or Lender to the contrary may vary or alter the terms of this agreement.

**10.02 *No Waiver or Course of Dealing.*** No waiver by Lender to assert its right under this Agreement in any one or more instances may be construed by Broker, other persons or a court of law as a waiver of Lender's right to enforce any term of this Agreement, and no alleged course of dealing between Lender and Broker, and no prior or contemporaneous oral statements of either Broker or Lender to the contrary may vary or alter the terms of this Agreement.

**10.03 *Severability.*** If any term of this Agreement shall be declared invalid by a court of law, the invalidity of such term shall not affect the validity or enforceability of any other term of this Agreement.

**10.04 *Mediation.*** Lender and Broker shall make a good faith attempt to mediate with each other any dispute concerning the terms of this Agreement in the presence of an independent mediator they shall mutually agree upon. Lender and Broker shall make a good faith attempt to mediate any dispute within thirty (30) days of its first being asserted, after which, if Lender and Broker shall not have resolved their dispute, either party may seek any remedy in law or equity, subject to the jurisdiction and venue requirements of subsection 11.05 of this Agreement.

**10.05 *Attorney's Fees and Costs.*** If suit be brought to enforce any term of this Agreement, the prevailing party shall be entitled to costs of suit plus a reasonable attorney's fee as shall be fixed by the court, and such fees and costs shall include those incurred in all post-trial or post-decision proceedings, including all appeals or retrials.

**10.06 *Authority of Representative.*** Broker warrants having complete authority to execute this Agreement for or on behalf of his or her principal and to bind Lender or Broker, as applicable, to the terms of this Agreement.

Broker's Initials \_\_\_\_\_

Agreed to and accepted this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
**Name of Broker Entity**

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

**Title:** \_\_\_\_\_

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

**Title:** \_\_\_\_\_