

## MORTGAGE BROKER AGREEMENT

This Mortgage Broker Agreement (the "Agreement") is entered into by and between: ST. CLOUD MORTGAGE, a California Corporation (the "Lender"), and \_\_\_\_\_ (the "Mortgage Broker") as of this day of \_\_\_\_\_, 20\_\_\_\_ with reference to the following facts:

### RECITALS

A. Mortgage Broker, among other activities, engages in the business of (i) soliciting mortgage loan application packages (each, an "Application Package") from the general public for submission to mortgage banking entities for funding consideration, and (ii) negotiating the terms and conditions of mortgage loans (each, a "Loan") as agent of the mortgage loan applicant (the "Borrower").

B. Lender, among other activities, accepts mortgage loan application packages submitted by independent mortgage brokerage companies for funding consideration.

C. Lender and Mortgage Broker desire to establish a nonexclusive relationship whereby Mortgage Broker will, from time to time and at its option, submit completed Application Packages to lender for funding consideration.

### AGREEMENT

1. General Mortgage Broker Responsibility: Fees. Mortgage Broker will, at Mortgage Broker's sole cost and expense, perform those services as are required or directed by Lender to prepare, process and submit Application Packages to lender for funding consideration, and to facilitate the closing of Application Packages approved for funding by Lender, including, without limitation, those services listed on Exhibit "A" to this Agreement, as such Exhibit "A" may be amended from time to time by Lender, in its sole discretion, to meet Lender's loan submission requirements. The character and amount of any fees charged or received by Mortgage Broker and payable by Borrower in connection with an Application Packages have been or will be determined by direct negotiations between Mortgage Broker and Borrower. Lender shall have no obligation to pay Mortgage Broker any sum owed to Mortgage Broker by Borrower, nor shall Lender have any obligation to pay Mortgage Broker any sum on account of any Application Package which Lender does not fund and close for any reason whatever.

2. Loan Approval. Lender shall make available to Mortgage Broker product descriptions of the Lender's lending programs being offered by Lender from time to time; provided, however, that such product descriptions may be modified at any time by Lender in its sole discretion and shall not be binding upon Lender. Lender shall have the right, in its sole and absolute discretion, to determine the acceptability of an Application Package for funding and Mortgage Broker shall not represent to any person, including Borrower, that Lender has approved or will approve, or that Lender has issued or will issue a binding commitment to fund, any Application Package until Mortgage Broker is so informed by Lender in writing. All loans shall close in Lender's name and with funds provided by lender unless Lender approves otherwise. All information contained in an Application Package shall be subject to Lender's independent verification.

3. Mortgage Broker's Representations and Warranties. Mortgage Broker represents, warrant and covenants to Lender, as of (a) the time any Application Package is submitted to Lender. (b) the time a Loan is funded and closed through the life of such Loan, and (c) any other time as indicated or as the context may require, that:

3.1. *Due Organization, Existence and Good Standing.* Mortgage Broker is duly organized and validly existing entity in good standing in the jurisdiction under whose laws Mortgage Broker is formed and has all licenses necessary to carry on its business as now being conducted. In addition, Mortgage Broker is licensed, registered, qualified and in good standing in each state in which any real property securing repayment of a Loan is located and in each state in which Mortgage Broker is engaged in the business of brokering mortgage loans if the laws of such state require licensing, registration or qualification to engage in the business of brokering mortgage loans, or is otherwise exempt under applicable law from such licensing, registration or qualification, and in any event is in full compliance with the laws, rules and regulations of each such state and of all real estate, mortgage lending or other regulatory or supervisory agencies having jurisdiction over Mortgage Broker's activities to the extent necessary to ensure the enforceability of the Loans. Mortgage Broker covenants to maintain all licenses, registrations and qualifications current and to keep itself in good standing with such regulatory and supervisory agencies. Mortgage Broker further covenants to notify Lender immediately upon the suspension, revocation, expiration or other termination of any licenses, registrations or qualifications, or of the taking of any action by any such regulatory or supervisory agency against Mortgage Broker which could adversely affect the Mortgage Broker's licenses, registrations and qualifications.

3.2. *Authority and Capacity; Consent; Enforceability of Agreement.* Mortgage Broker has the full power, authority and capacity to enter into this Agreement and this Agreement has been duly authorized, executed and delivered by Mortgage Broker and constitutes a valid and binding obligation of Mortgage Broker, enforceable in accordance with its terms. No consent, approval, authorization or order of any court or governmental agency or body is required for the execution, delivery and performance by Mortgage Broker of, or compliance by Mortgage Broker with, this Agreement or the consummation of the transactions contemplated by this Agreement, or if required, such consent, approval or authorization has been obtained. Mortgage Broker's compliance with the terms and conditions of this agreement will not violate any provisions of its charter documents, any instrument relating to the conduct of its business, or any other agreement, law or regulation to which it may be a party or under which it may be governed.

3.3. *Absence of Claims.* Except as previously disclosed by Mortgage Broker to Lender in writing, there is not pending or, to Mortgage Broker's knowledge, threatened any suit, action, arbitration, or legal, administrative, or other proceeding investigation (including an allegation of fraud by another lender) against Mortgage Broker or its current or former owners, agents or employees which would prevent the execution, delivery and performance by Mortgage Broker of its obligations under this Agreement or which could have a material adverse affect upon the Mortgage Broker's business, assets, financial condition or reputation, or upon any Loan submitted for funding by Lender.

3.4. *Control Disclosure and Validity of Information.* No borrower shall have had in his or her direct or indirect possession or control any credit, income or deposit verification document submitted to Lender with respect to any Loan. Mortgage Broker has and shall make prompt, timely, full, accurate and truthful disclosure to Lender of all facts, information and documentation which Mortgage Broker may know, suspect, or have notice of, which could affect or has affected the validity, collectibility, collateral value, security, or enforceability of any Application Package submitted by Mortgage Broker for finding consideration by Lender. All information on applications prepared by Mortgage Broker for submission to Lender with regard to the Application Packages, including all written attachments thereto, is and shall be true, correct, currently valid and genuine.

3.5. *Ownership.* Mortgage Broker has no direct or indirect ownership interest in any property acting as security for the Loan, of affiliation or relationship with any other party having a financial interest in the Loan or the Loan transaction.

3.6. *Compliance with Laws.* In connection with its solicitation and processing Application Packages I pursuant to this Agreement, Mortgage Broker and each other person involved in the Loan transaction has complied and will comply with all applicable state and federal laws, rules and regulations with respect to the Loans and the activities of Mortgage Broker, including, without limitation, the Truth-in-Lending Act, as amended, and Regulation Z promulgated thereunder, the Equal Credit Opportunity Act, as amended, and Regulation B promulgated thereunder the Real Estate Settlement Procedures Act of 1974, as amended, and Regulation X promulgated thereunder, and all other federal and state laws, rules and regulations as they relate to consumer credit disclosures and notices.

3.7. *Fees.* The nature and amount of any fees charged or received by Mortgage Broker and payable by Borrower have been determined by direct negotiations between Borrower and Mortgage Broker. The total fees to be received by Mortgage Broker have been separately itemized, fully disclosed, explained and agreed to by Borrower and are reasonably related to the market value of the services rendered by Mortgage Broker in connection with the Loan. There is no agreement between Mortgage Broker in and any other person or entity for the payment of any referral fee, rebate, bonus, kickback or other payment and no payment of such referral fee, rebate, bonus, kickback or other payment has been or will be made.

3.8. *Services to Borrower.* With respect to each Borrower whose Application Package has been submitted by Mortgage Broker to Lender for funding consideration pursuant to this Agreement, Mortgage Broker has observed and shall observe and fully discharge the fiduciary duties owed by Mortgage Broker to Borrower under applicable law. In particular, and without limitation to the foregoing, whenever required by such fiduciary duty, Mortgage Broker, its employees and/or agents has provided to Borrower any and all requisite disclosures and obtained any and all requisite agreement or authorization. All services performed by Mortgage Broker were performed to the full satisfaction of Borrower and in accordance with accepted and customary standards in the mortgage lending industry generally, and Mortgage Broker is not aware of any dispute or claim by a Borrower that all such services were not fully and satisfactorily performed.

4. *Status of Mortgage Broker.* Lender and Mortgage Broker acknowledge and agree that Mortgage Broker is an independent contractor. Nothing in this Agreement is intended, nor shall anything in this Agreement be construed, to make Mortgage Broker a joint venture, partner, representative, employee or agent of Lender, and Mortgage Broker is expressly prohibited from holding itself out as such. Mortgage Broker is expressly prohibited from using Lender's name in any advertising.

5. *Mortgage Broker's Indemnification.* Mortgage Broker shall indemnify and hold Lender and its affiliates, shareholders, directors, officers, agents, employees, successors and assigns harmless from and against, and shall reimburse the same with respect to, any all losses, damages, demands, claims, liabilities, costs and expenses, including reasonable attorneys' fees (collectively "Losses"), from any cause whatsoever, incurred by reason of or arising out of or in connection with, (a) any investigation undertaken by Lender with respect to any document included as part of an Application package; (b) any breach of any representation, warranty or covenant contained in this Agreement; (c) Mortgage Broker's failure to perform any of its obligations under this Agreement; or (d) any claim by a Borrower resulting from Lender's failure or refusal to fund a Loan other than pursuant to a binding commitment by Lender to fund such Loan. Mortgage Broker's obligation to fully indemnify Lender under this Agreement shall not be affected by Lender taking any of the following actions with or without notice to Mortgage Broker: (e) liquidation, repayment, retirement, or sale or resale of any Loan; (f) foreclosure of any Loan; or (g) sale or resale of the property securing any Loan.

6. *Termination of Agreement.* This Agreement may be terminated by either party, with or without cause, upon 10 days prior written notice to the other. Termination of this Agreement shall not affect the parties' obligations with respect to Application Packages submitted by Mortgage Broker to lender prior to the effective date of the termination of this Agreement. Furthermore, termination of this Agreement shall not extinguish Mortgage Broker's obligations to indemnify lender as provided herein above.

7. *Governing Law.* This Agreement shall be governed by and construed in accordance with the law of the State of California.

#### 8. *Miscellaneous.*

8.1 *Right to Offset.* Amounts owed by Mortgage Broker to Lender under this Agreement may, at Lender's option and in its sole discretion, be offset by lender against any payments then or thereafter owed by Lender to Mortgage Broker.

8.2 *Notices.* All notices required hereunder shall be in writing and shall be deemed to have been given, made, and received only (a) upon delivery, if personally delivered to a party; (b) one (1) business day after the date of dispatch, if by facsimile transmission; (c) one (1) business day after deposit, if delivered by a nationally recognized courier service offering guaranteed overnight delivery; or (d) three (3) business days after deposit in the United States first class mail, certified mail, postage prepaid, return receipt requested, to the address appearing on the signature page of this Agreement.

8.3 *Attorney's Fees.* If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party or parties shall be entitled to attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

8.4 *Assignment.* Mortgage Broker may not assign this Agreement or its duties hereunder.

8.5 *Entire Agreement; Amendment.* This Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment shall be binding unless executed in writing by both parties.

8.6 *Waivers or Remedies.* Lender's failure or delay to audit any Loan prior to finding and closing or to exercise any right or remedy available under this Agreement or at law or equity, shall not act as a waiver of any other right or remedy, nor shall any single or partial exercise of any right preclude any other or further exercise thereof. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver. All remedies shall be cumulative and nonexclusive.

8.7 *Partial Invalidity.* If any provision of this Agreement is held invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

8.8 *Further Assurances.* Each party shall perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this Agreement. In the event Lender receives notice that any Borrower has exercised his or her right of rescission after Lender has disbursed any loan proceeds, Mortgage Broker shall promptly return to Lender all amounts collected by Mortgage Broker from Borrower in connection with the Loan, regardless of whether such amounts were disbursed by Mortgage Broker to other parties.

**IN WITNESS WHEREOF**, the parties have caused their duly authorized representatives to execute this Mortgage Broker Agreement as of the date first set forth above.

"LENDER"

ST. CLOUD MORTGAGE  
Att: Loan Production/Approval Dept.  
22464 EAST WEAVER DR.  
AURORA, CO. 80016

Telephone: ( 877 ) 653 - 3276  
Facsimile: ( 720 ) 263 - 4083

BY:

\_\_\_\_\_

(Signature)

\_\_\_\_\_

(Name)

\_\_\_\_\_

(Title)

"MORTGAGE BROKER"

NAME:

\_\_\_\_\_

ADDRESS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

TELEPHONE: \_\_\_\_\_

FACSIMILE: \_\_\_\_\_

WEBSITE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

BY: \_\_\_\_\_

(Signature)

\_\_\_\_\_

(Name)

\_\_\_\_\_

(Title)

BY: \_\_\_\_\_

(Signature)

\_\_\_\_\_

(Name)

\_\_\_\_\_

(Title)

\* Submit a current copy of your MORTGAGE BROKERS LICENSE with this "AGREEMENT" \*

Note: For California DRE-licensed corporate Mortgage Brokers, One of the signatories must be Designated Broker/Officer