

## **MORTGAGE BROKER AGREEMENT**

This Mortgage Broker Agreement (hereinafter "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, By and between, Broker, \_\_\_\_\_, and Lender, Nationwide Equities Corporation, a New York corporation.

Lender is in the business of originating, processing, funding, closing and servicing loans secured by residential real estate. Broker is a mortgage loan broker and desires to refer loans to Lender from time to time for consideration by Lender for funding. Lender and Broker ("Party" or "Parties") wish to establish a nonexclusive relationship whereby Broker submits loan packages ("Loan" or "Loans") to Lender on behalf of Broker's clients ("Borrower" or "Borrowers") for possible funding. In consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, the Parties agree as follows:

1. Loan Submission and Approval. Subject to the terms, conditions and limitations contained in this Agreement, Broker agrees to submit, and Lender agrees to review, applications for Loans. Broker acknowledges and agrees that the decision to make or not make any Loan is made exclusively by Lender in its sole and absolute discretion. Broker shall not represent that Lender has approved or will approve any Loan until Broker is so informed by Lender in writing. All Loans shall close in Lender's name. Lender is under no obligation to accept any minimum number or percentage of loans, or any loans at all. Lender reserves the right to decline any loan application or credit request that Lender deems, in its sole and absolute discretion, as "predatory" or as not having any reasonable benefit to the Borrower.
2. Status of Broker. Nothing in this Agreement shall be construed as making Broker an agent, employee, representative, joint venture or partner of lender. Broker will not hold itself out as such, nor will it use Lender's name in any advertising or solicitation without Lender's prior written consent. Broker shall be deemed to be acting as an independent contractor and agent and representative of the loan applicant, and not of Lender. During the term of this Agreement, Broker is responsible for and shall pay in full all cost and expenses directly or indirectly incurred by Broker in performing under this Agreement. Broker will not in any way represent or imply to any Borrower that Broker is in any way affiliated with or connected to Lender including any representation that Broker's office is an Office or branch of Lender or that Broker has any power or authority to bind Lender. Broker has no authority, express or implied, to bind Lender in any manner whatsoever. No statement or representation of Broker shall be binding upon Lender unless such statement or representation is in writing and signed, printed or published by an authorized Employee of Lender.
3. Compensation to Broker. Any compensation earned by or otherwise owing to Broker for any services in connection with Broker's services to Borrower pursuant to this Agreement shall be payable only after Broker provides Lender with evidence that Broker has made a full disclosure to the Borrower of fees to be paid to Broker through the closing and fees paid or to be paid by the Lender to the Broker outside of the closing. Broker's fees and expenses shall be limited to the amount set forth on Lender's conditional loan approval notification. This compensation will be paid only after Lender deducts from the Loan proceeds all of its fees and charges. No fee shall be owed to Broker on any proposed Loan that is not funded and closed. Broker hereby waives and relinquishes any and all rights or claims it may have to any other compensation on Loans initiated by Broker. With respect to any compensation to be paid by Lender to Broker for professional services rendered by Broker to Borrower. Broker agrees that such compensation shall represent the market value for actual, non-duplicative services, including, but not limited to, interviewing and counseling Borrower, as well as procuring and submitting to Lender the loan application, credit report, property appraisal and other information required to close the Loan.
4. Loan Programs. Lender will publish a list of program guidelines from time to time, which may include provisions for Eligible property types, loan limits, loan-to-value ratios, points and fees. Loan programs are subject to Change and Lender reserves the right to modify, add or discontinue loan programs subject to this Agreement.
5. Broker's Representations and Warranties. Broker represents and warrants to Lender, which representations and warranties shall be deemed to be made as of the date of this Agreement, as of the time any Loan package is submitted to Lender and as of the date the Loan is funded by Lender, that:

- 5.1 Accuracy of Loan Information. None of the statements or information contained in any Loan package is false or erroneous, or omits material facts necessary to make such statements or information complete, accurate and understandable.
- 5.2 Absence of Claims. Except as previously disclosed by Broker to Lender in writing, there is not any pending or threatened suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation (including an allegation of fraud by another lender) against Broker or its current or former owners, agents, or employees which could have a material adverse affect on Broker's business, assets, financial condition, or reputation.
- 5.3 Duly Licensed. Broker is qualified to do business and possesses all necessary registration, licenses, and permits from all applicable local, state, and Federal authorities, where such licensing is required, to engage in the activities contemplated by this Agreement. Broker will maintain these licenses, permits, or registration in full force and effect during the term of this Agreement. Broker agrees to notify Lender in writing in the event of any notification of suspension, revocation, expiration, or other termination of license or registration.
- 5.4 Ownership. Except as otherwise disclosed to Lender in writing before the funding of any Loan, Broker, its service corporations and other affiliated entities have no direct or indirect ownership interest in any property acting as security for a Loan, or in the Loan proceeds themselves.
- 5.5 Compliance with Laws. Broker, its employees and its agents shall comply with all state and federal laws, rules and regulations which apply to Broker, including without limitation, the Real Estate Settlement and Procedures Act, the Truth In Lending Act, the Equal Credit Opportunity Act and the Fair Credit Reporting Act.
- 5.6 Right to Submit Loan Package. Broker has the exclusive right and authority to submit on behalf of each Borrower each Loan to Lender, and such right to submit is not subject to any other person's or entity's interest or to an agreement with any other person or entity.
- 5.7 Loan Application Process. Broker will interview each loan applicant in order to complete all necessary application forms and related documents, and to acquaint the Borrower with the contents of such documents and Borrower's rights and responsibilities there under. Broker will obtain from each Borrower and deliver to Lender a completed loan package consisting of the completed loan, credit and other applications. No person or entity, other than Broker and its agents and employees, is involved in the taking or processing of each Loan.
- 5.8 Appraisals and Credit Reports. In accordance with 12 C.F.R. 323.5(b) Broker is authorized to, and on behalf of Lender shall obtain and furnish Lender an accurate appraisal for each Loan, which appraisal shall be performed by an appraiser whom Broker represents as: (a) not disapproved by Lender in writing, (b) the holder of a valid license or certification for the applicable loan type from the applicable state authority with oversight over appraiser's activities in compliance with the requirements of the Federal Reserve Board's Regulation Y, 12 C.F.R. Part 225, (c) having no interest, direct or indirect, in the real property subject to the appraisal, (d) not entitled to receive compensation which is affected by the approval or declination of the applicable loan and (c) covered by professional liability insurance in form and substance acceptable to Lender. The cost of all appraisals submitted in connection with any Loan shall be borne by Broker or Borrower, and Lender shall have no responsibility for such costs. At the request of Lender, Broker shall submit evidence that appraiser is licensed, certified and has errors and omissions insurance. All credit reports submitted in connection with the Loans must be prepared by a credit bureau approved in writing by Lender. The cost of all credit reports submitted in connection with any Loan shall be borne by Broker or Borrower, and Lender shall have no responsibility for such costs. All credit reports for Borrowers must be factual and not contrived.
- 5.9 Capacity to Enter Agreement. Broker has all licenses necessary to conduct its business as it is now being conducted, and is licensed and qualified to transact business and is in good standing in the states in which the property to be encumbered in connection with the Loan(s) is located. Broker has the power and authority to own its assets and to carry on its business as it is now being conducted and is in compliance with all applicable laws governing the business of mortgage brokering. If Broker is a corporation, it is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized. If Broker is a sole proprietor or partnership, Broker is validly registered to do business under the name set forth in this Agreement

- 5.10 **Broker Fees.** All fees and compensation paid to Broker in connection with each loan, whether paid by the borrower or the Lender, are reasonably related to the value of the goods or facilities actually furnished or services actually performed, and are not compensation for the referrals of business, splits of fees or unearned fees.
6. **Lender's Representations and Warranties.** Lender hereby represents and warrants to Broker that Lender is a corporation, duly organized, validly existing and in good standing under the laws of the state of New York, and has all licenses necessary to conduct its business as it is now being conducted, and is licensed and qualified to transact business and is in good standing in the states in which the property to be encumbered in connection with the Loans is located. Lender has the power and authority to own its assets and to carry on its business as it is now being conducted and is in compliance with all applicable law governing the business of mortgage lending.
7. **Indemnification.** Broker shall indemnify, defend and hold harmless Lender and each Lender's owners, directors, trustees, officers, agents, employees, successors, and assigns from and against, and shall reimburse the same with respect to, any and all loss, damage, liability, costs, and expenses, including reasonable attorneys' fees, from any cause whatsoever, including, but not limited to, all repurchase demands of any third party to which Lender sells my Loan, that arises out of or in connection with any breach of any representation, warranty, or obligation contained in this Agreement. Lender shall be deemed to have incurred a loss automatically upon Lender's receipt of a Loan repurchase demand from a secondary market investor, which Lender determines in its sole and absolute discretion to be enforceable. All rights and remedies provided under Section 7 of this agreement shall survive the termination of this Agreement or the repurchase of any Loan by Broker.
8. **Repurchase.** At Lender's option and as part of Broker's duty to indemnify Lender pursuant to Section 7, Broker shall repurchase from Lender any Loan with respect to which there has been a breach of any term, condition, representation or warranty contained in this Agreement or as required under Section 7. Broker shall pay to Lender upon demand the repurchase price for such Loan, which shall be the greater of the then current principal loan balance plus any unpaid accrued interest and fees, if any, or such greater amount as Lender may be required to pay to repurchase the Loan from any subsequent investor. The repurchase remedy contained in this paragraph shall not constitute Lender's exclusive remedy and Lender shall have recourse to all other available remedies hereunder at law and in equity.
9. **Lender's Rights.** Broker's obligation to fully indemnify Lender under this Agreement is not affected by Lender's taking any of the following actions with or without notice to Broker: (a) liquidation, repayment, retirement, or sale or resale of any Loan; (b) foreclosure of any Loan; or (c) sale or resale of the property securing any Loan.
10. **Termination of Agreement.** This Agreement is unlimited in its duration but may be terminated at any time by either Lender or Broker. Such termination shall be effective upon receipt of written notice of termination, but in no event later than (5) days following the issuance of written notice. The obligations of the parties with respect to Loan Packages that have been registered with Lender prior to the receipt of such written notice of termination shall survive the termination of this Agreement. Lender may terminate this Agreement effective immediately without notice to Broker in the event of a breach by Broker, its agents or its employees, of any of Broker's obligations, representations or warranties contained in this Agreement.
11. **Governing Law and Arbitration.** This Agreement is governed by and shall be construed in accordance with the laws of the State of New Jersey. Any dispute involving the enforcement or interpretation of this Agreement shall be decided by binding arbitration in accordance with the then current Commercial Rules of the American Arbitration Association ("AAA") administered from the office of the AAA serving Bergen County, New Jersey. Without waiving the requirement to arbitrate, if either party deems it necessary to seek provisional relief or to compel arbitration or to confirm an award, the venue and forum for such action shall be the Superior Court of the State of New Jersey for the County of Bergen; to which the parties consent to jurisdiction.
12. **Miscellaneous.**
- 12.1 **Right of Offset.** Notwithstanding anything contained in this Agreement to the contrary, Lender has the right to set off against all compensation and other payments due or payable to Broker under this

agreement, the amount of any damages, liabilities, losses, costs and/or expenses (including attorney's fees and court and/or arbitration costs), suffered or incurred by Lender by reason of any breach or default by Broker and/or the agents or employees of Broker in the performance of any Broker's duties or obligations under this Agreement.

12.2 Notices. All notices required hereunder shall be in writing and are deemed given, made, and received only (a) upon delivery, if personally delivered to a party; (b) one business day after the date of dispatch, if by facsimile transmission; (c) one business day after deposit, if delivered by a nationally recognized courier service offering guaranteed overnight delivery; or (d) three business days after deposit in the United States first class mail, certified mail postage prepaid, return receipt requested, at the addresses appearing below.

To Lender:  
Nationwide Equities Corporation  
One International Blvd., Suite 210  
Mahwah, NJ 07495

To Broker: See Signature Page for name and address.

12.3 Attorney's Fees. If any legal action or other proceeding is brought to enforce 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 are entitled to reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

12.4 Assignment. Broker may not assign its rights or obligations under this Agreement without the prior written consent of Lender.

12.5 Further Assurances. Each Party Shall perform such further acts and execute and deliver such further documents that may be reasonably necessary to carry out the provisions of this Agreement.

12.6 Records. At all times during the term of this Agreement, Broker shall maintain on the business premises responsible for producing each Loan a complete set of files and records of all business, activities and operations conducted by Broker as required by Federal and state lending guidelines and in accordance with Lender's loans policies and procedures. At all time during the term of this Agreement and at all times following the expiration or termination of this Agreement, Lender, its regulators, internal auditors or independent auditors, and its duly authorized agents, representatives or employees have the right to audit, inspect and copy any of the foregoing records, reports and related materials of Broker.

12.7 Trade Secrets.

- (a) For purposes of this Agreement, the term "trade secrets" means all concepts or ideas related to the business of both parties including, without limitation, either party's techniques for the solicitation, origination and underwriting of Loans. "Confidential or proprietary information" means all material contained or encompassed in each party's customer files, loan files, computer printouts, underwriting and/or collection manuals, plans and proposals, including marketing and sales plans, financial information, costs, pricing information, and customer lists.
- (b) Broker acknowledges that the performance of Broker's duties under this Agreement will result in the disclosure to Broker of certain trade secrets and confidential or propriety information. Broker agrees to treat and preserve as confidential all of Lender's trade secrets. Broker further agrees that neither Broker nor any employee, agent or vendor of Broker shall willfully use for Broker's own benefit or purpose, or willfully disclose to others, either during the term of this Agreement or thereafter, any trade secret of Lender or any confidential or proprietary information connected with the business or development of Business of Lender, without prior written consent from Lender. The obligations of Broker under this Paragraph shall survive the termination of this Agreement.

- 12.8 No Third Party Rights. This Agreement is made and entered into for the express benefit of Broker and Lender, and not for the benefit or interest of any other person or entity. Accordingly, no third party shall obtain or acquire any rights or interests in this Agreement or by reason of the performance or failure of the performance of either Party hereto of their respective rights, privileges, duties and obligations arising hereunder. Lender, their successors and assigns, are expressly made third party beneficiaries of this Agreement with direct right of action under it.
  
- 12.9 Effect of Termination. Termination of this Agreement, for whatsoever reason, shall not relieve either of the parties here/to from any liability or obligation to the other party by reason of any breach or default theretofore occurring, whether or not discovered at the time of termination.
  
- 12.10 Conformance to Law. This Agreement and the provisions relating to compensation shall, without prior written notice, be automatically modified to conform with any law or governmental regulation having application to or jurisdiction over the subject matter of the parties hereto.
  
- 12.11 Non-Exclusive Relationship. In its sole discretion, Lender may use other loan brokers, and Broker may submit loan applications to lenders and brokers other than Lender. Nothing contained herein shall be construed as granting to Broker any exclusive right, whether with respect to time, territory or subject matter.
  
- 12.12 Entire Agreement: Amendments. This Agreement constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, representations, and understandings whether written or oral. No supplement, modification or amendment to this Agreement is binding unless executed in writing by both Parties. In the event a court of competent and final jurisdiction shall hold any provisions of this Agreement invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

IN WITNESS WHEREOF, the parties hereto cause this Agreement to be executed by their duly authorized representatives as of the date set forth above.

LENDER: Nationwide Equities Corporation

BROKER: \_\_\_\_\_

License No. \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

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