



## **BROKER/LENDER AGREEMENT**

### **The Construction Loan Company, Inc.**

This Broker/Lender Agreement (hereinafter "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between The Construction Loan Company, Inc. ("CLC"), and its subsidiaries, being a Michigan corporation with its principal place of business at 205 N Walnut Street, Howell, MI 48843 and \_\_\_\_\_ ("Broker"), a \_\_\_\_\_ (state in which entity was formed and type of formation; e.g., corporation, partnership, sole proprietor, etc.) with its principal place of business at \_\_\_\_\_

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#### **RECITALS**

**Whereas**, this Agreement is intended to set forth the entire understanding between the parties whereby Broker agrees to sell and assign to CLC and CLC agrees to purchase and accept from Broker all of the Broker's right, title and interest in and to certain one to four (1-4) family residential first mortgage loan applications originated and processed by Broker, then packaged and submitted to CLC for underwriting and possible funding, from time to time and subject to the terms, conditions and warranties herein provided, and

**Whereas**, nothing contained herein shall obligate Broker to submit all loan funding requests that it brokers to CLC, it being understood by both parties that this shall be a non-exclusive Agreement, and

**Whereas**, nothing contained herein shall obligate CLC to fund any loan submitted by Broker that, in CLC's sole and absolute discretion, does not meet the requirements in effect at the time the loan application was submitted.

#### **AGREEMENT**

**Now, therefore**, in consideration of the foregoing premises and of the mutual covenants herein set forth, CLC and Broker agree as follows:

1. Broker shall be responsible for the accurate preparation and execution of a complete property and credit loan application package on each loan request submitted, including but not limited to, those items listed below, as may be required by CLC in conformance with the policies and procedures set forth by CLC's underwriting committee (including construction department) with understanding that these policies and procedures may be modified from time to time.
  - a. Loan Application (1003);
  - b. Supporting credit information;
  - c. Supporting verification of credit, employment, deposits and mortgage payment history;
  - d. Copies of all federal and state government-required mortgage loan disclosures;
  - e. Original appraisal of the subject property with as completed value indicated per plans and specs;
  - f. All other supporting information necessary to substantiate borrower's qualifications for the loan.

2. Broker shall be responsible for obtaining an appraisal from a state licensed appraiser, CLC approved, on the property which will be security for such loan, and shall ensure that such appraisal is acceptable in form and content to CLC. All appraisals must be ordered through CLC's approved electronic Lending Platform via Order Services via its respective approved appraisal companies. Broker agrees to comply with all aspects of the Home Valuation Code of Conduct (HVCC) for all loan originated on or after May 1, 2009. Broker agrees to be responsible for payment of all appraisal fees within a timely manner, of loans submitted by Broker to CLC, regardless of loan closing.
3. Broker agrees at all times to comply with all applicable federal, state and local laws regarding the origination and processing of residential mortgage loans, including, but not limited to, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, the Truth In Lending Act, the Fair Credit Reporting Act and Fair and Accurate Credit Transactions Act.
4. Broker agrees to indemnify and hold CLC harmless from and against any and all claims, demands, liabilities, causes of action and expenses, including attorney's fees actually incurred, relating to, arising out of or in connection with Broker's negligence, misconduct or bad faith with regard to any act, error or omission of Broker hereunder.
5. With respect to each loan package submitted to CLC for funding, Broker hereby represents and warrants that:
  - a. It has the requisite authority to originate, sell, transfer and assign each loan application package;
  - b. This Agreement and all actions required hereunder have been duly authorized by the Board of Directors of Broker, if Broker is a corporation, or by such individual or individuals empowered and authorized to bind Broker, and Broker shall upon execution of this Agreement, provide CLC upon request with evidence reasonably satisfactory to CLC of such authorization;
  - c. Broker does not know of any suit, action, arbitration, legal, administrative or other proceeding pending or threatened against Broker which would affect its ability to perform its obligations under this Agreement;
  - d. All documents submitted in connection with each loan package submitted to CLC are in every respect valid and genuine, being what on their face they purport to be, and all information provided, including but not limited to, the credit report and appraisal, is complete, true and accurate;
  - e. Broker does not know or have reason to know of any circumstances or conditions with respect to any loan, mortgaged property, mortgagor or mortgagor's credit standing that would cause private institutional investors or secondary market investors to regard any loan as an unacceptable investment, cause any loan to become delinquent, or adversely affect the value or marketability of any loan;
  - f. No fraudulent or intentionally misleading information has been provided to CLC with respect to a loan application submitted to CLC for funding. For purposes of this paragraph, the term "information" shall mean any and all information obtained from or about the borrower or the property, including, but not limited to, the credit report and appraisal;
  - g. Broker has at all times complied with any and all applicable federal, state and local laws regarding the origination and processing of residential mortgage loans, including, but not limited to, the Real Estate Settlement Procedures Act, the Truth in Lending Act, the Equal Credit Opportunity Act, and the regulations issued under them.
  - h. Broker understands for Construction-to-Permanent Mortgages, CLC shall have First Right of Funding both the interim construction loan and end or permanent mortgage.
  - i. Broker agrees to comply and be responsible for all training, expenses and operational procedures, in conjunction with Desktop Originator and/or Desktop Underwriter. All terms and conditions apply per Addendum to Broker/Lender Agreement Broker Procedures for Desktop Originator<sup>®</sup> or Desktop Underwriter.

- j. Broker agrees and understands that upon submission of a mortgage, construction, or renovation loan to CLC; CLC's credit underwriting committee shall review the loan for approval or denial. Upon denial of a mortgage, construction or renovation loan, Broker understands that it is Broker's responsibility to notify the borrower immediately of the denial and send out appropriate compliance documents and that it will provide CLC, upon request, with a copy of the denial notice or with evidence that a loan has been made to the borrower by another lender.

All of the representations and warranties set forth above shall inure to the benefit of CLC and to its successors, affiliates, and assigns. All such representations and warranties shall survive (i) any investigation made by or on behalf of CLC, (ii) liquidation of any related mortgage loan, (iii) purchase of any related mortgage loan from CLC, (iv) repurchase of any related mortgage loan by CLC or Broker, and (v) termination of this Agreement, or any similar event.

6. In the event that the submission of a loan application package to CLC by Broker results in the closing and funding of a mortgage, construction, or renovation loan, Broker shall receive fees as indicated in the loan file of CLC's Lending Platform in "Closing Cost Details" which is required to be completed by Broker prior to the rate lock request and closing document preparation. Broker agrees to fully comply with all state and federal regulatory guidelines pertaining to fees and closing costs. Loans falling within 226.32 of Regulation Z or qualifying as "high cost loans" pursuant to state law are not allowed. Such fee(s) shall compensate Broker for its actual services rendered in the origination and processing of the loan application and the fee(s) shall be agreed upon between Broker and applicant. CLC shall collect fee(s) and distribute funds back to Broker upon closing or disbursement of the interim construction loan or mortgage. Broker agrees to hold CLC harmless from any liability, claims, demands, causes of action and expenses, including attorney's fees actually incurred, relating to, arising out of or in connection with such fee(s) collected and/or disputed by applicant or Broker's employees for Broker's behalf.
7. In the event that the submission of a loan application package to CLC by Broker results in the closing and funding of a mortgage, construction or renovation loan, to the applicant by CLC, which loan is subsequently rescinded by the borrower pursuant to the Truth In Lending Act, Regulation Z or any similar law or regulation, Broker shall immediately reimburse CLC for the full amount of any broker fees, however denominated, which CLC paid to Broker and/or borrower as a result of the borrower's rescission.
8. Broker shall not, and no subsidiary or affiliate of Broker shall, solicit the borrower under any mortgage loan to refinance. Modify, or otherwise pay off such borrower's interim construction loan or mortgage for a minimum **one year period**. "Solicitation" for purposes of this section shall not be deemed to have occurred where a borrower initiates the contact with Broker concerning a refinance transaction.
9. Broker agrees that upon written request Broker shall immediately repurchase, at the Repurchase Price, any loan (mortgage, construction or renovation) sold to CLC pursuant to this Agreement for the following reasons:
  - 9a. Broker fails to provide within a reasonable timeframe all of the mortgage loan documentation required by CLC.
  - 9b. Broker materially breaches any Representation, Warranty, and Covenant as set forth in this Agreement, and such breach is unable to be fully cured within thirty (30) to sixty (60) days or earlier, after CLC provides Broker with such notice of breach.
  - 9c. CLC reveals any evidence of fraud in the origination and closing of the loan (mortgage, construction or renovation) by the Broker, or its employees, directors, officers, agents and independent contractors (including without limitation, sellers or brokers of the Broker).
  - 9d. CLC reveals any evidence of fraud in the origination and closing of the loan (mortgage, construction or renovation) committed by the Borrower(s), that the Broker

had such knowledge of, including Broker's employees, directors, officers, agents and independent contractors (including without limitation, sellers or brokers of the Broker).  
9e. If CLC determines the loan (mortgage, construction or renovation) is a "High Cost Loan" as determined by Agency guidelines, federal and state laws.

The Repurchase Price that the Broker must pay to CLC is the outstanding principal balance on the loan at the time of the repurchase request, plus any accrued interest, within 30 days of receipt of demand therefore from CLC. Additionally, Broker agrees to indemnify and hold CLC harmless from and against any related losses, damages, judgments or legal expenses, including any additional amounts which CLC may have paid to repurchase said loan from another investor. Broker shall be required to repay any yield spread premium paid to them by CLC if a loan pays off within the first **120 days** after the purchase date.

10. Nothing contained herein shall constitute a partnership or joint venture between CLC and Broker, and the parties acknowledge that at all times they are operating as independent contractors. Broker shall at no time hold itself out to be CLC's agent or employee.
11. CLC and Broker shall have the right to terminate this Agreement at any time with or without cause and for any reason, which termination shall be effective immediately upon the opposite party's receipt of written notice thereof. Notwithstanding any such termination, this Agreement shall continue to apply with respect to any loan applications which have been locked-in, submitted or otherwise committed to CLC under this Agreement.
12. Broker, its affiliates or subsidiaries, shall at all times maintain such licenses, registrations, educational requirements, and qualifications to do business, and remain in good standing as may be required in the jurisdictions in which it conducts its business. Broker shall annually provide to CLC copies of said licenses, registrations, as well as updated financial statements, proof of any required insurance or bond coverage and resumes of key officers, in the event that changes have occurred since such resumes were last submitted.
13. This Agreement shall be governed by the laws of Michigan, and any action which may be commenced in connection with this Agreement shall be instituted in Michigan.

**IN WITNESS WHEREOF**, Broker and CLC, by their respective authorized signatories, have executed this Agreement as of the date first above written.

**BROKER**

**THE CONSTRUCTION LOAN COMPANY, INC.**

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By

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By

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Typed or Printed Name

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Typed or Printed Name

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