



This Mortgage Broker Agreement ("Agreement"), made the day and year indicated below, by and between First Capital Bank, a Virginia corporation ("First Capital"), its successors and assigns, and _____ ("Broker") sets forth the terms and conditions under which Broker will, from time to time, offer certain mortgage loan applications and all of its right, title and interest in and to such applications ("Loans") to First Capital for First Capital to underwrite, purchase and close such Loans subject to this Agreement.

1. SERVICES TO BE PROVIDED BY BROKER

Broker shall provide all services customarily provided, and as specified by First Capital from time to time, in bringing borrowers together with lenders to obtain mortgage loans. Such services shall include, but are not limited to, the following:

- a) Take applicants' loan applications;
- b) Pre-qualify applicants for available loan programs based on Broker's analysis of their needs and financial information;
- c) Collect financial information (tax returns, bank statements, etc.) and other related documents that are part of the application process;
- d) Order verifications of employment, deposits, loans, etc;
- e) Order appraisals and other necessary inspections and reports;
- f) Provide Good Faith Estimate, Truth in Lending Disclosure, Lock-In and other necessary disclosures to applicants;
- g) Maintain regular contact with applicants, realtors, First Capital and other involved parties to facilitate a smooth process from application to closing;
- h) Educate the applicant in the home buying and financing process and advise the applicant about different loan products available; and,
- i) If requested, participate in the loan closing.

2. FACILITIES TO BE PROVIDED BY BROKER

Broker and First Capital acknowledge that First Capital relies on Broker's staff and facilities to originate Loans in lieu of First Capital's use of and payment for its own retail branches. The parties regard a reasonable portion of Broker's operations as a facility for which First Capital may compensate Broker, and the compensation paid to Broker under this Agreement may include a reasonable amount for such facility.

3. PRICING AND LOCK INS

Broker will receive daily prices and interest rates ("Rates") from First Capital for mortgage and other loan products available from First Capital to qualified applicants. The Rates may be locked-in for qualified applicants, only for the period specified by First Capital ("Lock Period"). Broker shall advise applicants that when the Lock Period expires, the locked Rate may no longer apply, regardless of the reason for delay in closing.

- a) In the event that a Loan has been locked and does not close and disburse prior to the expiration date of the Lock Period, the Loan may be re-locked, for a period to be determined by First Capital, based on First Capital's policies existing at that time (which may or may not be at current market rates and prices).
- b) Broker agrees to make every effort to ensure the delivery and closing of all locked Loans prior to the expiration of the Lock Period. First Capital intends to regularly monitor fallout percentages of Broker and notify Broker when those percentages are unacceptable to First Capital.

4. LOAN APPROVAL BY FIRST CAPITAL

- a) Loans submitted by Broker to First Capital shall be submitted in accordance with First Capital's then-current secondary market underwriting standards and First Capital's loan program requirements. First Capital may revise its rates, standards, policies, and requirements from time to time, all of which are in First Capital's discretion. Nothing contained in this Agreement shall obligate First Capital to approve, close, or fund any Loan submitted by Broker. A Loan is considered approved only when First Capital provides express written approval of the Loan. All Loan approvals are within First Capital's sole and absolute discretion. A Loan submitted to First Capital shall close only after First Capital issues express written approval of the Loan.
- b) Broker understands that First Capital may, from time to time, conduct quality control audits to re-verify credit documentation, appraisals and other information on Loans submitted by Broker. Broker agrees to cooperate with the quality control audits and to provide to First Capital (or its consultant) Broker's documentation and records as reasonably necessary for the quality control audit.

5. LOAN CLOSING AND BROKER COMPENSATION

Prior to closing, Broker shall assign to First Capital all right, title and interest in any Loan submitted to and approved by First Capital. Closing of any such Loan in First Capital's or its designee's name automatically operates as such assignment. First Capital intends to close approved Loans in its own name, but shall instruct the closing agent to pay directly to Broker Broker's entire compensation collected at Loan closing and any other compensation due Broker unless Broker already has received the compensation from another source (such as the borrower).

Broker's compensation from First Capital shall be the amount indicated on First Capital's lock confirmation for the particular Loan. Rate sheets expire at the earlier of (i) the time indicated on the rate sheet; (ii) when a new rate sheet is issued by First Capital; and (iii) First Capital's issuance of notice of expiration. The compensation shall be payment for, among other permissible purposes, the goods, services and facilities performed and furnished by Broker under this Agreement. Broker shall not accept compensation for goods, services and facilities not actually performed and furnished by Broker or compensation that exceeds the reasonable value thereof. First Capital determines compensation based on First Capital's policies and daily rate sheet and information provided by Broker. First Capital endeavors to have broker compensation rates within compensation rates normally charged for the services, goods, and facilities Broker is to provide and within the market value of the same. Broker and First Capital acknowledge and agree that the total compensation to Broker in connection with the Loan is not intended to be greater than the reasonable value of the goods, services and facilities and other value added by Broker, but recognize that the exact value for such goods, services and facilities for each transaction may not be susceptible to precise calculation. It is understood and agreed that Broker's compensation is not earned unless and until the Loan closes, and that upon payment of all compensation due from First Capital to Broker, First Capital shall have no further obligation to Broker.

6. NON SOLICITATION OF EXISTING LOANS; REPAYMENT OF PREMIUM

During the first six (6) months following the closing of any Loan sold to First Capital by Broker, neither Broker nor any affiliate, employee, or agent of Broker shall take any action personally, by telephone, mail or otherwise to solicit the prepayment of said Loan. Broker shall repay to First Capital any above par pricing, servicing release premium, yield spread premium, and/or lender credit to borrower paid to Broker or an individual borrower by First Capital, as the case may be, for any Loan sold to First Capital by Broker which

prepays for any reason, including, but not limited to Broker's solicitation, within the first six (6) months following the closing of said Loan.

7. NOTIFICATION OF CHANGES

Broker agrees to notify First Capital, in writing, of any changes in its address, branch locations, ownership, senior management, key personnel, branch managers, and/or licensure or status with any licensing authority or government-sponsored insurance or guarantee program.

8. MUTUAL REPRESENTATIONS AND WARRANTIES

Broker and First Capital represent and warrant to each other that, as of the date of this Agreement and as of each Loan closing:

- a) It is duly organized, existing, and in good standing under the laws of its jurisdiction of organization, and has the requisite power and authority to enter into this Agreement.
- b) It has all licenses and other approvals and authorizations required by applicable laws and regulations necessary for the execution and performance of this Agreement.
- c) Its compliance with the terms and conditions of this Agreement will not violate any provision of its charter, articles of incorporation or by-laws, any agreement relating to the conduct of its business, or any other agreement to which it may be a party.
- d) This Agreement has been duly authorized, executed, and delivered to the other party and is binding against the party.
- e) It is not subject to any bankruptcy, insolvency, dissolution, seizure, or similar filing or action as to its assets or business except as the other party has been advised in writing.

9. REPRESENTATIONS AND WARRANTIES OF BROKER

Broker represents, warrants, and covenants to First Capital that, (i) as of the time of submission of the Loan file to First Capital and, (ii) to the knowledge of Broker, also as of the closing of such Loan:

- a) The Loan conforms in all respects to the requirements of this Agreement;
- b) If the Loan is to be submitted under such program, the Loan is insured or is insurable by the Federal Housing Administration ("FHA") or is guaranteed or eligible for guaranty by the Veteran's Administration ("VA");
- c) The Loan is, in all respects, one that could lawfully be made by an institution of the type and classification of Broker;
- d) The Loan, and Broker's activities relating to the Loan, are in full compliance with all applicable laws and regulations including, but not limited to, the Federal Truth In Lending Act, the Real Estate Settlement Procedures Act (RESPA), the Equal Credit Opportunity Act and their related regulations;
- e) Until the Loan is assigned to First Capital, Broker is the sole owner of the Loan free and clear of all liens and encumbrances, and Broker has not sold, assigned, pledged, transferred, or agreed to do such to any other person or entity;
- f) The signatures of the applicant(s)/mortgagor(s) are genuine on all Loan documents;
- g) Information submitted in the Loan file is, to the best of Broker's knowledge, genuine, accurate, and complete and does not omit information necessary to make the submitted information not misleading;

- h) No referral fee, commission, kickback, or tangible or intangible compensation of any kind has been or will be received or retained by Broker, or to Broker's knowledge, by any other firm, person, or entity in connection with such Loan except as are lawful and as are disclosed (by both type and amount) in the Good Faith Estimate and any settlement statement prepared or signed by Broker;
- i) The total compensation which Broker has accepted or will accept in connection with the Loan bears a reasonable relationship to the market value, as best estimated by Broker, of the goods, services, and facilities provided by Broker in connection with the Loan;
- j) Broker is not under suspension, and has not been terminated, from Fannie Mae (Federal National Mortgage Association or FNMA), Federal Home Loan Mortgage Corporation (Freddie Mac or FHLMC), FHA, or VA loan programs or any similar program or by any licensing agency;
- k) Broker has not made any representations or promises, either orally or in writing or by implication, that it is an agent for First Capital or that it can guarantee, obtain, or influence approval of any loan application, or underwriting, closing, or funding of a Loan, by First Capital;
- l) Unless previously disclosed to First Capital in writing, there is not pending or threatened any suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation (including any allegation of fraud by another lender) against Broker or its current or former owners, agents or employees that could have a material adverse effect on the Broker's business, assets, financial condition or reputation.

10. CONFIDENTIALITY AND PRIVACY

Each party acknowledges that the other party may provide it with valuable, non-public proprietary information regarding the other party's products, programs, underwriting policies, procedures and other concerns ("Confidential Information"). Except to the extent necessary to perform its obligations under this Agreement or as required by law, order, subpoena, or regulation, each party shall keep the other party's Confidential Information strictly confidential and shall not disclose the other party's Confidential Information to any person other than its employees, consultants, agents, and representatives on a need-to-know basis. Each party shall be responsible for its employee's, consultant's, agent's and representative's compliance (and non-compliance) with this confidentiality covenant. This confidentiality covenant shall survive the expiration or termination of this Agreement. Each party agrees that a violation by it of this paragraph will cause irreparable injury to the other party, and the other party may seek appropriate equitable relief in connection with any violation or threatened violation of this paragraph.

Both parties may be subject to state and federal laws and regulations regarding privacy of consumer and customer financial information. The parties acknowledge that customers of one party may also be customers of the other party. Each party agrees to undertake all reasonable efforts to comply with such privacy laws and regulations to the extent applicable to such party. To the extent a party receives consumer or customer information, that is protected by any privacy law or regulation, from the other that is not also consumer or customer information of the party, the party shall (A) use and disclose such consumer or customer information only (i) as reasonably necessary and appropriate to carry out the purposes for which the information was provided or made available, (ii) in the ordinary course of business, and (iii) as required or permitted by applicable privacy laws and regulations; and (B) implement and maintain appropriate safeguards for the security, confidentiality, and integrity of the consumer or customer information.

11. BROKER LOAN REPURCHASES

Broker agrees that if any Loan sold to First Capital fails to meet any of the requirements in this Agreement or if Broker has defaulted in any representations, warranties, and/or other covenants set forth in this Agreement with respect to such Loan, Broker shall immediately repurchase said Mortgage Loan, on request of First Capital, at a repurchase price equal to the greater of (1) par (the principal balance of the loan) or (2) the price paid for the mortgage, together with accrued interest, servicing release premiums and other fees (including reasonable attorney's fees) incurred by First Capital to the date of repurchase.

12. RIGHT TO SET OFF AND REMEDIES

In addition to all rights and remedies First Capital may have at law or equity in the event of a default by Broker, First Capital reserves the right to collect any amounts due from Broker to First Capital through a reduction in any amounts due to Broker from future Loan closings or otherwise. All remedies under this Agreement are cumulative and not exclusive.

13. INDEMNIFICATION

Broker agrees to indemnify and hold harmless First Capital and its officers, directors, employees, agents, and representatives (the "Indemnified Parties") from and against all liabilities, losses, damages, and expenses (including reasonable attorney's fees and the cost of litigation and/or settlement) suffered or incurred by, or awarded against, any of the Indemnified Parties arising from or relating to (i) any negligent act or omission of, or misconduct by, Broker or Broker's employees or agents, (ii) any material breach by Broker of any terms of this Agreement or any default by Broker as to any of its representations or warranties in this Agreement, and/or (iii) any violation or alleged violation by Broker or Broker's employees or agents of any law or regulation in connection with any Loan. This indemnification shall survive the expiration, termination, or cancellation of this Agreement.

14. NON-EXCLUSIVE AGREEMENT

This Agreement is nonexclusive, and each party shall be free to contract with other parties for the same types of transactions as described in this Agreement.

15. INDEPENDENT CONTRACTOR

First Capital and Broker are independent contractors. This Agreement does not create any agency relationship between the parties. This Agreement does not give or grant to either party any right to bind the other party or to exercise control or direction of the other party, its activities, employees, or agents. Neither party to this Agreement shall have authority to employ any person as an employee or agent of the other party. Neither party to this Agreement, nor any person performing duties for, or engaging in activities at the request of, either party, shall be deemed to be an employee or agent of the other party. Although First Capital may sponsor Broker with FHA, VA and other loan programs, such sponsorships (even if designated by the program as an "agency") are only for the purposes of such programs and are not legal agencies; First Capital may discontinue any sponsorship of Broker at any time in First Capital's discretion.

16. MODIFICATION; ASSIGNMENT; WAIVER

This Agreement is the entire agreement between Broker and First Capital with respect to matters set forth herein and supersedes all other agreements. Any representations, promises and agreements not contained in this Agreement shall have no force and effect. No additions or modifications to this Agreement shall be valid unless set forth in writing and signed by both First Capital and Broker. However, this paragraph shall not limit or restrict First Capital's ability to revise its policies, rates, requirements, and standards from time to time, in its discretion, as described in this Agreement, which revised policies, rates, requirements, and standards shall apply as they are provided to Broker. Broker acknowledges that First Capital's agreements herein are based on certain representations and qualifications specific to Broker; Broker shall not delegate, assign, or subcontract any responsibilities, obligations, or rights under this Agreement, or this Agreement, without First Capital's prior written consent. No waiver of any term or default of this Agreement shall be deemed a continuing waiver, and any waiver must be in writing and signed by the waiving party in order to be enforceable.

17. GOVERNING LAW; SEVERABILITY

The performance, interpretation, and enforcement of this Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia and applicable federal law. If any term of this Agreement is void, invalid, or unenforceable, such term shall be severed from this Agreement to the extent thereof and shall not affect the other terms of this Agreement.

18. TERMINATION

Either party may terminate this Agreement at any time by giving the other party fifteen (15) days' prior written notice. However, notwithstanding any termination, this Agreement shall continue to apply to Loans presented to First Capital before the effective date of termination, until First Capital disapproves the Loan or the Loan closes and settles; provided, in addition to First Capital's other rights and discretions in this Agreement, First Capital shall not be obligated to approve, underwrite, fund, or close, or to compensate Broker, with respect to any such Loan for which First Capital discovers it has received false or misleading information or which is the subject of any breach of this Agreement by, or illegal, unethical, or improper act or omission of, Broker or Broker's employees or agents.

19. NOTICES

All notices required or permitted under this Agreement shall be in writing and shall be personally delivered or sent postage prepaid by certified or registered U.S. regular mail or by reputable overnight or second day courier service, to the addresses indicated below. Notices so given shall be deemed effective on the earlier of (i) receipt and (ii) receipt and refusal. However, this paragraph does not limit the ability of the parties to transmit rate and other non-notice information via facsimile or electronic mail.

To Broker:

Attention: _____

To First Capital:

**First Capital Bank Mortgage
5001 Craig Rath Blvd
Midlothian, VA 23112**

**Attn: Ronald Voli
Sr. Vice President
Director of Wholesale Lending**

IN WITNESS WHEREOF, the parties have signed this Agreement effective as of the latest date shown below, thereby acknowledging their acceptance of the terms and conditions set forth herein.

Broker: _____
By: _____
Name: _____
Title: _____
Date: _____

First Capital: First Capital Bank
By: _____
Name: _____
Title: _____
Date: _____