



## NONEXCLUSIVE LOAN BROKERAGE PURCHASE AND SALE AGREEMENT

This LOAN BROKER AGREEMENT (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_ by and between First Guaranty Mortgage Corporation (“FGMC”), a corporation organized and existing under the laws of the Commonwealth of Virginia, on behalf of itself and its successors, assigns, subsidiaries and /or affiliates, and \_\_\_\_\_ (“Broker”), a State of \_\_\_\_\_

with offices at \_\_\_\_\_

IN CONSIDERATION of the mutual covenants hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Broker shall assemble and deliver completed FHA/VA\* and/or conventional mortgage loan application and underwriting packages (“Packages”) to FGMC under the terms and conditions as established by FGMC from time to time (the “Submission Requirements”). Broker, at Broker’s sole cost and expense, shall prepare, or cause to be prepared, the loan application, supporting credit information, and conformity with this Agreement and each document or relevant origination, delivery or representation requirement referenced hereby, including without limitation the Submission Requirements, all of the terms and conditions of which are incorporated herein in ongoing fashion with each Package submission to FGMC, by this reference.
2. The following terms and conditions are a part of the “Submission Requirements” under which the Broker will provide Broker Services, the parties shall conduct the relationship evidenced hereby, and FGMC shall underwrite and close approved Packages delivered by the Broker. As used herein, “Broker Services” could include:
  - (a) Taking information from the borrower and filling out the application or borrower's worksheet;
  - (b) Analyzing the prospective borrower's income and debt and pre-qualifying the prospective borrower to determine the maximum mortgage that the prospective borrower can afford;
  - (c) Educating prospective borrower in home buying & financing process, advising about the different types of loan products available, and demonstrating how closing costs and monthly payments could vary under each product, including in particular the impact on loan terms or the presence or absence of a prepayment penalty;
  - (d) Collecting financial information (tax returns, bank statements) and other related documents that are part of the application process;
  - (e) Initiating/ordering VOsEs (verifications of employment) and VODs (verifications of deposit);
  - (f) Initiating/ordering requests for mortgage and other loan verifications;
  - (g) Initiating/ordering appraisals;
  - (h) Initiating/ordering inspections or engineering reports;
  - (i) Assisting the borrower in understanding and clearing credit problems;
  - (j) Maintaining regular contact with the borrower, realtors, lender, between application and closing to appraise them of the status of the application and gather any additional information as needed;
  - (k) Ordering legal documents;
  - (l) Determining whether the property was located in a flood zone or ordering such service;
  - (m) Providing any and all other disclosures required by federal, state or local law (including but not limited to the federal TILA, RESPA, ECOA and FCRA).
- 2.1 Standard. All Packages submitted by Broker to FGMC shall fully comply with all pertinent origination and delivery requirements and representations and warranties by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the applicable private investor, and such terms and conditions and other requirements as FGMC shall specify from time to time (collectively, “Program Description”).
- 2.2 Assignment of Rights. Upon submission of a Package to FGMC, Broker thereby assigns all of its right, title and interest in such Package to FGMC, and upon such submission, the Package becomes the property of FGMC EXCEPT THAT Broker retains the right to charge and collect any fee in excess of, or in addition to, those fees and charges specified by FGMC in connection with such Package or Program Description.
- 2.3 Underwriting. All determinations to approve or deny such Packages shall be made by FGMC, in its sole and absolute discretion.

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\* Only brokers that are approved by the applicable state / federal authorities may submit FHA/VA loan application.



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- 2.4 Loan Closing, Denial or Termination. FGMC shall close approved Packages in its own name with FGMC funds, following FGMC's instructions. In the event that a Package is not approved by FGMC, Broker shall provide the applicant with an adverse action notice on behalf of FGMC and Broker pursuant to the Equal Credit Opportunity Act, as amended, and Regulation B promulgated thereunder; provided, however, that in the event that a Package is not approved by FGMC and Broker also has submitted the applicant's loan request to additional lenders, Broker agrees to follow FGMC's **Adverse Action Notification Guidance for Multiple Lenders**. Broker shall not provide such notice to the applicant in cases where Broker submits the Package to another lender who is not approved by FGMC, or if the applicant terminates the related mortgage loan application. If required by applicable law, Broker shall return all documents paid for by, or belonging to, the loan applicant to such applicant.
- 2.5 Disclosures. Broker shall make prompt, timely, fully accurate and truthful disclosures to FGMC of the following:
- any facts, information and documentation which Broker may know, suspect or have notice of, that could affect or has affected the validity, collectibility and security or enforceability of any loan that results from a Package delivered to FGMC hereunder;
  - any fact or suspected fact known to Broker which, if known to FGMC, would have a material influence on FGMC's decision to lend money to a particular applicant; or
  - any material change in the condition of the applicant which would render any of the information provided to FGMC untrue or misleading.
- 2.6 Audits. Broker acknowledges that FGMC routinely conducts quality control audits at Broker's site/s and otherwise to re-verify documentation and appraisal submitted by Broker. Broker further acknowledges that any discrepancies found by FGMC during such audits are grounds for immediate termination of this Agreement. Upon the discovery of such discrepancy, FGMC may notify the applicable investor and state or federal agency of such discrepancy.
- 2.7 Misrepresentation. Broker has not made, and throughout the term of this Agreement shall not make, any misrepresentation or any misstatements of any fact, whether by act, statement, concealment or omissions, in connection with any Package delivered to FGMC hereunder or in connection with any information provided or submitted to FGMC in anticipation, performance or furtherance of this Agreement..
- 2.8 Costs and Expenses. Broker shall be solely responsible for all costs and expenses associated with the assembly, submission and delivery of each Package and any other documents required by FGMC in connection with each Package.
- 2.9 Cooperation. Broker understands that in consideration of FGMC funding mortgage loans in connection with Packages processed by Broker and delivered to FGMC hereunder, RELIES ON Broker's full and continuing cooperation, both before and after the mortgage loan is funded by FGMC. Accordingly, Broker agrees to process Packages in accordance with the provisions set forth in this Agreement and FGMC Product Descriptions, and to fully assist FGMC to obtain any additional information and documentation that FGMC reasonably deems necessary. Moreover, Broker agrees and warrants that it will not charge, seek or collect from consumer or any other person, firm or corporation any higher or different fees than are disclosed in the Package or permitted by applicable law. Broker further warrants that it has maintained strict control over the personal information of the consumer applicant, in accordance with applicable state and federal privacy laws.
3. As a material inducement to FGMC to enter into this Agreement and to consummate the transactions contemplated hereby, Broker makes the following representations and warranties as of the date of this Agreement and each time a Package is presented to FGMC:
- 3.1 Organization. (I) Broker is a duly organized and validity existing entity in good standing under the applicable laws of the state of its formation and (II) Broker and its agents and employees, where required, are duly qualified, licensed and approved to broker mortgage loans and to conduct all activities contemplated by this Agreement in each jurisdiction in which such qualification, licensure or approval is required, and such qualifications, licenses and approvals are in good standing, and (III) Broker is not subject to or in receipt or aware of any regulatory report or regulatory notice that at the time of this representation and warranty or with the passing of time shall require the Broker to change any aspect of the Broker's operations, processes, advertising, notices, disclosures, agreements of any kind, office locations or the like.
- 3.2 Authority. No Conflict. Broker has the requisite authority and capacity to execute and enter into this Agreement and to perform the obligations required of Broker hereunder. The execution, delivery and performance of this Agreement by Broker, its compliance with the



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terms and conditions hereof, and consummation of the transactions contemplated hereby shall not violate, conflict with, or result in a breach of any provisions of its charter documents, and any instruments relating to the conduct of its business, or any other agreement to which it may be a party.

- 3.3 **Compliance with Law.** Broker and Broker's agents will comply fully with any and all applicable laws, regulations, rules and ordinances in connection with the activities of Broker contemplated by this Agreement. Such laws, regulations, rules and ordinances shall include, without limitation, the Real Estate Settlement Procedures Act of 1974, as amended, the Equal Credit Opportunity Act, as amended, the Truth In Lending Act, as amended, the Federal Fair Credit Reporting Act, as amended, and the respective regulations adopted under each such act. In connection with the submission of a Package to FGMC hereunder, Broker represents and warrants: (I) that all information contained in such Package is accurate and complete, and (II) that such Package is in full compliance with all pertinent requirements and warranties of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, and such other requirements as FGMC may identify in the Product Descriptions.
- 3.4 **Actions.** There are no actions, suits, proceedings, or administrative actions pending against or affecting Broker before any court or governmental department, commission, board, bureau or agency which would have a material adverse affect on the ability of Broker to perform its obligations under the terms of this Agreement.
- 3.5 **Financial Information Provided.** Broker acknowledges that prior to the execution of this Agreement, Broker has furnished its most recent financial statement (audited, if available) and federal tax return to FGMC, and at any time or from time to time hereafter, Broker shall furnish to FGMC immediately upon request its then current financial statement and federal tax return and such other information as FGMC shall reasonably request., and that each such statement or document is true, correct and complete and contains no material omissions.
- 3.6 **Continuing representation and warranty.** Broker represents and warrants that it has and will perform the Broker Services as defined herein, that each submission meets the definition of Package, and that with each Package submission, the Broker remains an "Eligible Broker," as defined herein.

#### 4. SUBMISSION OF FALSE OR FRAUDULENT INFORMATION [OR EARLY PAYMENT DEFAULT].

Broker acknowledges that FGMC relies on Broker to generate Packages that meet investor guidelines, as the same evolve. In the event that any false or fraudulent information was submitted in connection with any Loan, and Broker knew, or in the exercise of reasonable diligence pursuant to the investor guidelines of Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Housing Administration or such other investor guidelines which FGMC may identify as applicable to each loan submitted, Broker should have known, of the false or fraudulent information, or any representation or warranty made by Broker was untrue, upon FGMC's discovery thereof, or in the event of a Payment Default ("Payment Default" herein shall mean a default in any of the first four (4) payment due under the loan), FGMC shall have the right to cause Broker to reimburse any sums provided by FGMC to fund and close such Loan within 10 days of FGMC's notification to Broker ("Reimbursement Notification") without limitation upon any and all other available rights and remedies. For purposes thereof, the term "information" shall mean any and all information obtained from the loan applicant or any reference source that would, according to standard practices and procedures in the mortgage lending industry be within the control or knowledge of Broker, as well as any appraisal-related information that is a result of, or is communicated because of, any relationship or transaction between the appraiser and Broker. Upon thirty (30) days' prior FGMC notice to Broker, Broker acknowledges that FGMC may change the Payment Default definition, which thereafter shall be applicable hereunder.

5. **EARLY PAYOFF.** Should the broker or his agent refinance any loan sold to FGMC during the first 12 months from date of funding, Broker shall reimburse FGMC the premium paid on the loan. The reimbursement shall be reduced by 1/12 of such amount for each month that elapses from the date of the funding by FGMC, i.e. loan refinances in month 5 then 7/12 of the reimbursement amount is due FGMC.
6. **TERMINATION.** Either party hereto upon written notice to the other party may terminate this Agreement, with or without cause, and any termination will be effective immediately. However, upon termination by either party, the terms and conditions of this Agreement shall apply, without exception, to all loans submitted by Broker to FGMC prior to said termination. Further, any termination hereof shall not affect Broker's liability for any alleged breach of a covenant, representation or warranty with respect to any Packages that have been received by FGMC prior to the aforementioned notice of terminations; provided, however, that if this Agreement is terminated by FGMC for the breach of any covenant, representation or warranty, then FGMC, in its sole discretion, shall have the option to promptly return such Packages to Broker without further obligation.



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7. SURVIVAL. Notwithstanding any subsequent termination of this Agreement all representations, warranties and covenants set forth herein shall remain in full force and effect until such time as all of the mortgage loans originated in connection with Packages delivered to FGMC hereunder have been liquidated by payment in full or foreclosure.
8. RELATIONSHIP OF THE PARTIES. Broker is an independent contractor and shall not represent itself in any manner to be an agent, servant, employee, representative, partner or joint venture of FGMC. Broker shall have no authority to solicit, bind or commit FGMC to any contract or transaction, and Broker shall not represent in any manner that Broker has any such authority. This Agreement is not intended to create, and shall not be deemed to create, a beneficiary or fiduciary relationship between the parties hereto, or either of them, and any third party.
9. NON-EXCLUSIVE, NO SOLICITATION. The relationship between FGMC and Broker, as set forth in this Agreement is non-exclusive. Broker acknowledges that FGMC has heretofore entered into, and may in the future enter into, similar arrangements with other brokers. FGMC shall not be restricted by this Agreement from entering into such other arrangements from time to time at the sole election of FGMC and without notice to Broker. For one (1) year after funding of any Package by FGMC, Broker shall not solicit, or take any refinance loan application on the same property from the borrowers to whom such Package was provided
10. ASSIGNMENT. The parties hereto recognize that the nature of this Agreement is personal to Broker. Accordingly, Broker acknowledges and agrees (I) that it shall not sell, assign, transfer or delegate any of its rights, duties or obligations hereunder, and (II) that any attempted sale, assignment, transfer or delegations of such rights, duties or obligations shall be void. FGMC may sell, assign, pledge or in any other way transfer, in whole or in part, its rights and obligations under this Agreement to any entity including any FGMC affiliates without notice to or consent of Broker.
11. GOVERNING LAW. The laws of the Commonwealth of Virginia shall govern this Agreement, without giving effect to the choice of law provisions there under. With respect to any matters arising under this Agreement, the parties consent to the personal jurisdiction of the Circuit Court of Fairfax County, Virginia. The parties further agree, that if the Broker breaches any terms or conditions of this Agreement, FGMC shall be entitled to recover its reasonable attorney's fees and costs in addition to such other damages which may be awarded to such party. The parties hereby agree that FGMC, and only FGMC, may elect, in its sole and absolute discretion, to submit any matters arising hereunder to binding arbitration in Fairfax County, Virginia, in accordance with the rules of the American Arbitration Association and that any such arbitration, if elected by FGMC, shall be binding on the parties.
12. NOTICES. All notices, demands, consents, requests and other communications required or permitted to be given or made hereunder in writing shall be deemed received and delivered upon the earlier of: (1) actual receipt; (2) three business days after being mailed (first class mail, return receipt requested and first class mail postage prepaid); or (3) one business day after being mailed by overnight delivery utilizing Federal Express overnight delivery service. If service is by mail, the notice must have been addressed to the respective parties hereto at their respective addresses set forth below or, at such other address as has been previously designated, in writing, and in accordance with this section:

TO FGMC:

First Guaranty Mortgage Corporation  
Attention: General Counsel  
8180 Greensboro Drive, Suite 500  
McLean, VA 22102

TO BROKER:

Broker (or d/b/a):  
Attention:  
Address:

All written notices shall be conclusively deemed to have been properly given or made if delivered in accordance herewith.

13. COUNTERPARTS. This Agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed to be an original and all of which, taken together, shall constitute one and the same agreement.

[END OF DOCUMENT – SIGNATURE PAGES TO FOLLOW]



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IN WITNESS WHEREOF, the parties hereunto have executed this Agreement as of the day and year first written above.

**Broker**

**First Guaranty Mortgage Corporation**

By: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_ (SEAL)

Title:

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

Its:

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

The following person(s) employed by Broker are to review each loan file and approve it for submission to FGMC:

**Name**

**Signature**

_____
_____
_____
_____
_____
_____
_____
_____
_____