



first community mortgage



## BROKER AGREEMENT

This Broker Agreement ("Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between First Community Mortgage, Inc., and \_\_\_\_\_ ("Mortgage Broker") (collectively, "the Parties"), and is entered into with reference to the following facts:

A. Mortgage Broker is engaged in the business of soliciting residential mortgage loan applications and related documentation from the general public for submission to mortgage banking entities for funding consideration. Among other things, as part of this business, Mortgage Broker negotiates the terms and conditions of residential mortgage loans on behalf of mortgage loan applicants.

B. First Community Mortgage, Inc. accepts residential loan application packages and related documentation submitted by mortgage brokers for funding consideration.

C. The Parties desire to establish a non-exclusive relationship whereby, in accordance with the terms of this Agreement, Mortgage Broker will from time to time, and in its sole discretion and in its agency capacity for its loan applicants ("Borrowers"), submit residential loan application packages and related documentation, in compliance with First Community Mortgage, Inc.'s program requirements and loan origination policies and procedures ("Application Packages"), to First Community Mortgage, Inc. for funding consideration.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

### 1. Definitions.

"Agreement" means this Mortgage Broker Agreement by and between First Community Mortgage, Inc. and Mortgage Broker. This Agreement may be amended or modified from time to time as set forth below.

"Application Package(s)" shall mean the documentation necessary for First Community Mortgage, Inc. to determine Borrower's eligibility for a residential mortgage loan to be funded by First Community Mortgage, Inc. (each, a "Loan"), which shall include, but not be limited to, a mortgage loan application, verifications of income, liabilities, and net worth, as well as all compliance with the Underwriting Guidelines set forth in the Lender Requirements.

"FCM" shall mean First Community Mortgage, Inc.

"Lender Requirements" means (i) qualification requirements, in place presently or may be required in the future, for Mortgage Broker to become a First Community Mortgage Qualified Broker, including subsequent periodic evaluations thereof; (ii) Guidelines for Loan Origination services to be provided by Mortgage Broker; (iii) Mortgage Broker compensation; (iv) Code of Conduct; and, (v) Underwriting Guidelines.

"Underwriting Guidelines" shall mean, with respect to each Application Package, the underwriting guidelines of First Community Mortgage, Inc., Fannie Mae, Freddie Mac, Federal Housing Administration, Ginnie Mae, and USDA and or any private investor as applicable in effect on the date an Application Package is submitted to First Community Mortgage, Inc. by Mortgage Broker for funding consideration.

### 2. Loan Submission.

2.1 First Community Mortgage, Inc. hereby authorizes Mortgage Broker to submit Application Packages to FCM based on current Underwriting Guidelines and pricing information then in effect. Mortgage Broker agrees to submit Application Packages to FCM that are taken by Mortgage Broker in compliance with applicable state and federal laws, and in accordance with the Underwriting Guidelines then in effect.

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2.2 First Community Mortgage, Inc. shall make available to Mortgage Broker the current Approval Requirements, which may be withdrawn or modified at any time by Lender in its sole discretion. Mortgage Broker agrees that the most current version of the Approval Requirements as of the date an Application Package is submitted shall be applicable. Mortgage Broker acknowledges and agrees that the Approval Requirements are intended solely to facilitate the receipt and processing of Application Packages for underwriting and loan processing by FCM, and that compliance by Mortgage Broker with the Approval Requirements does not obligate FCM to accept or to underwrite any Application Package submitted by Mortgage Broker.

2.3 Mortgage Broker agrees and covenants that as to each Borrower for whom an Application Package is submitted to First Community Mortgage, Inc., Mortgage Broker, if so required by applicable law: (i) has agreed in writing with the Borrower to act as the Borrower's authorized agent to negotiate a Loan, including the payment of appropriate compensation, if any; and (ii) will provide Lender a copy of the written agreement between Mortgage Broker and Borrower; and (iii) Lender may deem Mortgage Broker to be acting in such agency capacity for the Borrower for all purposes of the transactions contemplated by this Agreement.

2.4 Upon receipt of a completed Application Package from Mortgage Broker, First Community Mortgage, Inc., in its sole discretion, may underwrite and approve/deny such Application Package on the basis of FCM's then current Approval Requirements and secondary market standards. Nothing in this Agreement constitutes a representation or commitment by FCM will extend credit to any Borrower, and the determination as to the creditworthiness of any Borrower, including the terms and conditions of a Loan, shall be final and conclusive. Without limiting the foregoing, FCM shall have the right, in its sole discretion, to approve the terms proposed in an Application Package for a Loan, the creditworthiness of the Borrower and the adequacy of the security for a Loan. Mortgage Broker shall not represent to any person, including Borrower that Lender has approved or will approve an Application Package, or that Lender has issued or will issue a binding commitment to fund a Loan. All information contained in an Application Package shall be subject to FCM's independent verification. FCM's independent verification (or lack thereof) of any Application Package shall not reduce, waive or otherwise modify any of the rights or remedies provided hereunder. All information and documentation to be utilized in connection with such Application Packages and Loans, including loan applications, requests for deposit verifications, state and federal consumer disclosures, promissory notes, security documents, deeds of trust and mortgages, shall be on forms approved by FCM, in conformance with all applicable state and federal laws and regulations, the Approval Requirements, and this Agreement.

2.5 If First Community Mortgage, Inc., in its sole discretion, approves an Application Package; FCM may issue an approval letter setting forth the conditions upon which Lender will fund the subject Loan, along with the expiration date of the approval (the "Approval Letter"). FCM shall have no obligation to fund a loan prior to fulfillment of all funding conditions contained in, or after expiration of, the Approval Letter.

2.6 First Community Mortgage, Inc. shall not be obligated to fund any Loan that does not, in FCM's sole discretion, comply with the current Agreement or any exhibits thereto, the related Approval Letter or FCM's Requirements.

2.7 All Loans shall close in First Community Mortgage, Inc.'s name with funds provided by FCM. At the time of the closing of the Loan, Mortgage Broker agrees to assign to Lender all of Mortgage Broker rights, title and interest in and to the subject loan, the Application Package, and all materials relating to the Loan of whatever nature or kind.

### **3. Loan Origination Services and Compensation.**

3.1 Mortgage Broker will, at Mortgage Broker's sole cost and expense, prepare process and submit Application Packages to First Community Mortgage, Inc. for funding consideration and facilitate the closing of Application Packages approved for funding by Lender. Mortgage Broker services and facilities shall include, but will not be limited to, those services and facilities required by the FCM's Requirements, as amended from time to time, at the sole discretion of FCM. The specified loan origination services and facilities performed by Mortgage Broker pursuant to this Section 3.1 shall be referred to in this Agreement as the "Loan Services." Without limiting the generality of the foregoing, Mortgage Broker shall perform the following Loan Services, or any equivalent or similar service as may be required by FCM from time to time during the term of this Agreement:

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- a) Taking information from the Borrower and completing the loan application
- b) Analyzing the prospective Borrower's income and debt and prequalifying the prospective Borrower to determine the maximum mortgage that the prospective borrower can afford;
- c) Educating the prospective Borrower in the home buying and financing process, advising the prospective Borrower about the different types of loan products available, and demonstrating how closing costs and monthly payments could vary under each product;
- d) Collecting financial information (tax returns, bank statements) and other related documents that are part of the application process;
- e) Initiating/ordering VOEs (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) Providing disclosures (truth in lending, loan estimate, other disclosures) to the borrower;
- j) Assisting the borrower in understanding and clearing credit problems;
- k) Maintaining regular contact with the borrower, Realtors, lender, throughout the loan process to apprise them of the status of the application and gather any additional information as needed;
- l) Ordering legal documents;
- m) Determining whether the property is located in a flood zone or ordering such service; and
- n) Participating in the loan closing.

3.2 First Community Mortgage, Inc. may pay Mortgage Broker, pursuant to the terms of this Agreement and payable at the time of the closing of a Loan, compensation for the Loan Services performed by Mortgage Broker at the percentage rate periodically agreed to by the Parties, as set forth in the FCM approval requirements, programs and pricing options. All compensation paid by FCM to Mortgage Broker, and all compensation paid by Mortgage Broker to its loan originators, shall comply with the Loan Originator Compensation Rule, as set forth in Regulation Z at 12 CFR 1026.36 and the Official Staff Commentary to Regulation Z, and in all Bulletins, Small Entity Compliance Guides, responses to Frequently Asked Questions, and/or orders that may be published by the Consumer Financial Protection Bureau from time to time during the term of this Agreement. All compensation paid by Lender to Mortgage Broker for its provision of the Loan Services will reflect the fair market value of the Loan Services in the market area in which Mortgage Broker performed the same. Mortgage Broker shall disclose its compensation, and the cost of any bona fide and reasonable third-party charge, if any, charged to Borrower on the Loan Estimate of Closing Costs pursuant to TRID, and in accordance with all other applicable consumer disclosure and other legal requirements. No compensation may be received by Mortgage Broker from Borrower in connection with any Loan for which Mortgage Broker received any compensation from FCM.

3.3 Mortgage Broker may, alternatively, negotiate and receive from Borrower, payable at the time of the closing of a Loan, compensation for its services that is typical and customary in Mortgage Broker's market area for that particular loan type. All compensation paid to Mortgage Broker by a Borrower, and all compensation then paid by Mortgage Broker to its loan originators, shall comply with the Loan Originator Compensation Rule, as set forth in Regulation Z at 12 CFR 1026.36 and the Official Staff Commentary to Regulation Z, and in all Bulletins, Small Entity Compliance Guides, responses to Frequently Asked Questions, and/or orders that may be published by the Consumer Financial Protection Bureau from time to time during the term of this Agreement. Mortgage Broker shall disclose its compensation, and the cost of any bona fide and reasonable third-party charge, if any, charged to the Borrower on the Loan Estimate pursuant to TRID, and in accordance with all other applicable consumer disclosure and other legal requirements. No compensation will be paid by FCM to Mortgage Broker in connection with any Loan for which Mortgage Broker received any compensation from Borrower.

3.4 THE PARTIES AGREE THAT ANY FEE OTHER THAN THE COMPENSATION DESCRIBED IN SECTION 3 OF THIS AGREEMENT IS SUBJECT SOLELY TO THE CONTRACTUAL TERMS AND CONDITIONS AGREED TO BETWEEN A BORROWER AND MORTGAGE BROKER, AND SUCH MORTGAGE BROKER FEE IS NOT A CONDITION OR A REQUIREMENT BY FIRST COMMUNITY MORTGAGE INC. IN ORDER TO ACCEPT OR UNDERWRITE AN APPLICATION PACKAGE.

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## 4. Mortgage Broker Representations, Warranties and Covenants.

Mortgage Broker represents, warrants and covenants to First Community Mortgage, Inc., on behalf of itself and its officers, directors, employees, representatives and agents, that to the best of Mortgage Broker knowledge, information and belief and after diligent inquiry as of (a) the date and time any Application Package is submitted to Lender, (b) the date and time a Loan is funded and closed, (c) throughout the time such Loan remains outstanding, and (d) any other date and time as indicated or as the context of this Agreement may require, as follows:

**4.1 Due Organization, Existence and Good Standing.** If a corporation, partnership or other entity other than a natural person, Mortgage Broker: (i) is and shall remain duly organized and a validly existing entity in good standing in the jurisdiction under whose laws Mortgage Broker is formed; and (ii) is and shall be duly qualified to conduct its business in each jurisdiction in which such qualification is required.

**4.2 All Licenses and Authorizations.** Mortgage Broker, has, and shall maintain, all licenses necessary to carry on its business as now being conducted, including all licenses necessary to conduct the mortgage brokerage/lending business (if applicable) contemplated by this Agreement. Mortgage Broker is, unless otherwise exempt, licensed, registered, qualified and in good standing in each state in which: (i) real property securing repayment of a Loan is located; and/or (ii) the laws of such state require licensing, registration or qualification in order to engage in mortgage loan origination. Mortgage Broker covenants to maintain all licenses, registrations and qualifications current and in good standing, and to keep itself, and those of its employees, agents or representatives engaged in residential mortgage loan origination, licensed, registered and qualified with all applicable regulatory and supervisory agencies during the term of this Agreement. Mortgage Broker covenants to adhere to and comply with any state or federal record retention requirements. Mortgage Broker further covenants to notify FCM immediately upon the suspension, revocation, expiration or other termination of any licenses, registrations or qualifications of it or its loan originators, or of the taking of any formal or informal administrative or judicial action by any regulatory or supervisory agency against Mortgage Broker or its loan originators that could adversely affect Mortgage Broker licenses, registrations and qualifications.

**4.3 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, including its officers, directors, employees, representatives and agents, 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 compliance with the terms and conditions of this Agreement will not violate any provisions of its charter documents, if any, 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.

**4.4 Absence of Claims.** Except as previously disclosed by Mortgage Broker to First Community Mortgage, Inc. in a writing to be attached to this Agreement as Exhibit B, there is not pending or, to Mortgage Broker knowledge, threatened any suit, action, arbitration, or legal, administrative, or other proceeding or investigation, including an allegation of fraud by another lender, against Mortgage Broker or its current or former officers, directors, shareholders, employees, representatives and/or agents that would prevent the execution, delivery and performance by Mortgage Broker of its obligations under this Agreement or which could have a material adverse effect upon Mortgage Broker business, assets, financial condition or reputation, or upon any Application Package submitted for funding by FCM.

**4.5 Disclosure and Validity or Information.** To the best of Mortgage Broker knowledge, information and belief and after diligent inquiry, Mortgage Broker shall make prompt, timely, full, accurate and truthful disclosure to FCM of all facts, information and documentation that Mortgage Broker knows, suspects or has notice of that could affect, or has affected, the eligibility, validity, collectability, collateral value, security, or enforceability of any Application Package submitted by Mortgage Broker for funding consideration by FCM. All information set forth in mortgage application(s) prepared by Mortgage Broker for submission to FCM included in an Application Package, including all written attachments thereto, is and shall be true, correct, currently valid and genuine. Mortgage Broker is not aware of any errors, omission, misrepresentation, negligence, fraud or similar occurrence with respect to an Application Package or a

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Loan has taken place on the part of any person or entity, including, without limitation, Mortgage Broker and its officers, directors, employees, representatives and agents, the Borrower, any appraiser, any builder or developer, or any person involved in the preparation and/or submission of an Application Package to the First Community Mortgage Inc. or the origination of a Loan.

**4.6 Control of Documents.** Mortgage Broker shall maintain direct and indirect possession and control of all credit, income or deposit verification documentation submitted to Lender with respect to any Application Package or Loan.

**4.7 Ownership.** Unless advance written consent is given by First Community Mortgage, Inc. to Mortgage Broker to the contrary, Mortgage Broker shall have no direct or indirect interest, including, but not limited to, any ownership interest in any real property, related in any manner with a Loan, in any property pledged as security for a Loan, or an affiliation or relationship with any person or entity having a financial interest in a Loan, an Application Package or a Loan transaction. Other than the compensation described in Section 3 of this Agreement, Mortgage Broker has not received any other form of financial remuneration or benefit, direct or indirect, from any person or entity relating to a Loan transaction.

**4.8 Compliance with Laws.** In connection with its solicitation, processing, and submission of an Application Package pursuant to this Agreement, Mortgage Broker, for itself and on behalf of every other person or entity involved in the Loan transaction, covenants and agrees that it and they will comply fully and in a timely manner with all applicable state and federal consumer protection and disclosure laws, including, but not necessarily limited to, the following: (i) the Truth-in-Lending Act, and Regulation Z; (ii) the Equal Credit Opportunity Act, and Regulation B; (iii) the Home Mortgage Disclosure Act, and Regulation C; (iv) the Real Estate Settlement Procedures Act, and Regulation X; (v) the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (vi) the Gramm-Leach-Bliley Act, and Regulation P; (vii) the SAFE Mortgage Licensing Act, and Regulation G; (viii) the Mortgage Acts and Practices-Advertising Act, Regulation N; (ix) the federal Fair Housing Act, and similar state and federal nondiscrimination housing laws and regulations; and (x) the TIL-RESPA Integrated Disclosures (TRID) rules and (xi) all other federal and state laws, rules and regulations as they relate to fair lending, consumer credit disclosures and notices, broker related notices and disclosures, privacy rights, and record retention requirements. At all times Mortgage Broker represents and warrants, for it, and every other person or entity involved in the Loan transaction, that it and they shall be in compliance with First Community Mortgage, Inc.'s fair lending policy and any amendments thereto. Mortgage Broker covenants and warrants to provide compliance training pertaining to all aforesaid laws, regulations and rules, and any amendments thereto, on a continuing basis throughout the term of this Agreement, including compliance with the Lender Requirements. Mortgage Broker is in full compliance with all real estate mortgage lending or other regulatory or supervisory agencies having jurisdiction over Mortgage Broker activities to the extent necessary to ensure the enforceability of the Loans.

**4.9 Fees.** The nature, character, and amount of any fee charged or received by Mortgage Broker and payable by Borrower in connection with an Application Package or a Loan will be determined solely by direct negotiations between Mortgage Broker and the Borrower. The total fees to be received by Mortgage Broker shall be separately itemized, fully disclosed, explained and agreed to in writing by Borrower, reasonably related to the value of the services rendered, and shall represent a reasonable and customary fee in the market area in which those services were performed.

**4.10 Compensation Only on Closed Loans.** If First Community Mortgage, Inc. does not fund and close, for any reason whatsoever, a Loan submitted by Mortgage Broker, FCM shall have no obligation to pay Mortgage Broker for the performance of the Loan Services or any sum owed to Mortgage Broker by Borrower arising out of a Loan, nor shall Lender have any obligation to pay Mortgage Broker compensation for any sum in connection with the Application Package.

**4.11 No Kickbacks.** There is no agreement between Mortgage Broker 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 to any person, including, but not limited to, the Borrower and/or Mortgage Broker.

**4.12 Services to Borrower.** If applicable law so requires, Mortgage Broker is acting as the authorized agent of the Borrower with respect to the submission of an Application Package and the negotiation of a Loan and has entered into a contract with the Borrower authorizing the Mortgage Broker to act in such agency capacity for the Borrower concerning the transactions contemplated by this

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Agreement. Mortgage Broker has observed and shall observe and fully discharge any applicable duties owed by Mortgage Broker to Borrower under law with respect to each Borrower and related Application Package that has been submitted by Mortgage Broker to FCM for funding consideration pursuant to this Agreement. Without limiting the foregoing, whenever obligations are required by such duty, law, or FCM guideline and/or agreement, Mortgage Broker, including its officers, directors, employees, representatives and agents, has provided to Borrower any and all requisite disclosures, including, but not limited to, those pertaining to Mortgage Broker compensation and has obtained any and all requisite agreements and authorizations. All services performed by Mortgage Broker were performed to the full satisfaction of Borrower by Mortgage Broker and in accordance with the legal, prudent, accepted and customary standards in the mortgage lending industry generally. Mortgage Broker is not aware of any dispute or claim by any Borrower that all such services were not fully and satisfactorily performed. No Borrower has any claim or defense against Mortgage Broker, and its officers, directors, employees, representatives and agents, by reason of any act or omission of Mortgage Broker, and its officers, directors, employees, representatives and agents, arising out of or related in any manner to an Application Package, a Loan or a Loan transaction.

**4.13 Corrections.** Mortgage Broker shall, upon request by First Community Mortgage, Inc., take all actions necessary, in a timely and an accurate manner, to obtain corrections to any and all Loan documents as may be appropriate and to otherwise assist FCM in remedying any matter not in compliance with applicable law, regulations or FCM Requirements, including assisting FCM in obtaining recorded documentation relating to a Loan and title policies from closing agents.

**4.14 Use of Approved Vendors.** Mortgage Broker has not and shall not utilize any real estate appraiser, credit reporting agency or other settlement service providers or vendors in connection with an Application Package that do not comply in all respects with all applicable state and federal laws and such standards as may be set forth in the Lender Requirements.

**4.15 Credit Life Insurance.** Mortgage Broker may not sell, or offer to sell, credit life insurance to Borrowers without prior disclosure of such sale, or offer to sale, to FCM and proper disclosure of same to the Borrower.

**4.16 Appraisals.** Mortgage Broker shall order its appraisals through Lender's approved Appraisal Management Companies per the instructions listed on Lender's website (or other location) and shall comply with all applicable federal and state laws, regulations and rules regarding appraiser and valuation independence.

**4.17 Current Version of the Broker Agreement and Lender Requirements.** This Agreement is subject to change, from time to time, at FCM's sole discretion. Broker is responsible for reviewing any changes. Mortgage Broker has access to the most recent version of the Agreement and the Lender Requirements as provided by FCM and has strictly complied with all requirements set forth therein. Without limiting the foregoing, Mortgage Broker agrees with, and consents to, all terms and conditions set forth in the current version of the Agreement, and by submitting an Application Package to FCM, Mortgage Broker agrees to comply in all respects with all amendments and modifications set forth in the current version of the Agreement and the Lender Requirements, including any amendments delivered to Mortgage Broker pursuant to the terms of Section 14.4.

**4.18 Anti-Money Laundering.** Mortgage Broker has established and implemented a written Anti-Money Laundering ("AML") program that is reasonably designed to prevent Mortgage Broker from being used to facilitate money laundering or the financing of terrorism. Mortgage Broker represents and warrants that its AML program, at a minimum: (i) incorporates policies and procedures and internal controls for complying with the Bank Secrecy Act ("BSA"); (ii) designates a qualified compliance officer responsible for ensuring that the AML program is implemented effectively, and includes regular and ongoing monitoring of Mortgage Broker employees and agents to ensure compliance with that program; (iii) provides for ongoing AML training of Mortgage Broker employees and agents; and (iv) provides for independent testing of Mortgage Broker AML program to determine compliance by its employees and agents. (v) implements risk based procedures for conducting ongoing customer due diligence. In addition, Mortgage Broker represents and warrants that it has implemented policies and procedures to ensure that Suspicious Activity Reports ("SAR's") are filed electronically, and in a timely manner, in connection with loan transactions of \$5,000 or more if Broker knows, or has reason to suspect, that the transaction: (a) involves funds derived from illegal activity; (b) is designed to evade the BSA or Broker's AML program; (c) has no apparent business or lawful purpose; or, (d) is intended to facilitate criminal activity;



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**4.19 Compliance Management System.** Mortgage Broker certifies that it maintains an effective quality control program and Compliance Management System ("CMS") designed to prevent violations of federal consumer financial law, and associated consumer harm. Mortgage Broker shall make available, upon the request of FCM: (a) copies of Mortgage Broker written policies, procedures, internal controls and training materials relative to Mortgage Broker employees and/or agents that have consumer contact and/or any consumer compliance responsibilities in connection with residential mortgage loan origination; and, (b) permit FCM access, during normal business hours, to the offices of Mortgage Broker in order that FCM may make appropriate on-site reviews, as necessary to confirm the propriety and effectiveness of Broker CMS, including an examination of Mortgage Broker internal controls and procedures that are designed to protect against a violation of federal consumer financial law and/or consumer harm. Mortgage Broker agrees to report to FCM within three (3) days: (a) any consumer complaint which in any way involves any of the services contemplated by this Agreement or an Application Package submitted to FCM for funding consideration; (b) any consumer complaint which involves federal consumer financial law, whether or not related to the services contemplated by this Agreement; (c) any legal or regulatory action which alleges a violation of federal consumer financial law; and/or, (d) any changes in senior management. It is expressly understood and agreed that the terms of this section 4.19 are a material condition and inducement to FCM to enter into this Agreement. It is further understood and agreed that any failure of Mortgage Broker to fully perform, in whole or in part, any of the terms of this section shall constitute a material breach of this Agreement and the grounds for its immediate termination.

**4.20 Tax Reporting Requirements.** Section 6050H of the United States Internal Revenue Code and regulations promulgated thereunder (collectively, the "Reporting Requirements") require an information return using Form 1098 to be made to the United States Internal Revenue Service, and a statement to be furnished to the Payer of Record (as defined in the Reporting Requirements), in connection with the transaction. Correspondent/Broker desires to designate First Community Mortgage Inc. as the "Reporting Person" (as defined in the Reporting Requirements) with respect to the transaction as permitted by the applicable Internal Revenue Code.

## 5. Mortgage Broker's Indemnification

Mortgage Broker hereby agrees to indemnify and hold First Community Mortgage, Inc., and its officers, directors, employees, shareholders, representatives, successors, assigns, agents and affiliates (collectively, the "Indemnitees"), harmless from and against, and shall reimburse the Indemnitees with respect to, any and all losses, damages, demands, claims, liabilities, costs and expenses, including reasonable attorneys' fees, whether or not a lawsuit is filed (collectively, "Losses"), of any nature or 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) Mortgage Broker breach of any representation, warranty or covenant contained in this Agreement; (c) Mortgage Broker failure to perform any of its obligations under this Agreement; or (d) any claim by a Borrower resulting from FCM's failure or refusal to fund a Loan. Mortgage Broker obligation to fully indemnify the Indemnitees under this Agreement shall not be affected by FCM taking any of the following actions with or without notice to Mortgage Broker: (i) liquidation, repayment retirement, or sale or resale of any Loan; (ii) foreclosure of any Loan; or (iii) sale or resale of any real or personal property securing any Loan. For the purposes of this Agreement, including this Section 6, Mortgage Broker specifically covenants, represents and warrants that the knowledge and actions of Mortgage Broker's officers, directors, employees, representatives and agents shall be imputed to, and be deemed the actions of, Mortgage Broker.

## 6. Privacy.

Each of the Parties shall comply in all respects with their respective state and federal obligations concerning the privacy of Borrower data in their possession. Without limiting the foregoing, each of the Parties shall comply in all respects with the requirements of Title V of the Gramm-Leach-Bliley Act and the Federal Trade Commission's implementing regulations including, without limitation, the Federal Trade Commission's Safeguards Rule.

## 7. Non-Solicitation / Early Payoff/Early Payment Default.

**7.1 Non-Solicitation.** Without the prior written consent of Lender, for a period of six (6) months from the date of funding of any Application Package, Mortgage Broker hereby agrees that it will not take any action or permit or cause any action to be taken by any of its officers, directors, employees, representatives and/or agents, or by any independent contractors or settlement service providers of

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any nature or kind, to personally, by telephone, mail or any other medium, solicit the Borrower or any mortgagor under any Loan for any purpose whatsoever, including, among others, to refinance such Loan, in whole or in part.

**7.2 Early Payoff.** Mortgage Broker shall not be entitled to compensation on a closed Loan until any early payoff period or early payment default period on the Loan expires. In the event that FCM advances compensation to Mortgage Broker prior to the expiration of any early payoff or early payment default period, FCM may demand that Mortgage Broker reimburse FCM for the amount paid by FCM to Mortgage Broker for any Loan submitted by Mortgage Broker that results in an early payoff or early payment default. Within thirty (30) days of receipt of FCM's notice, Mortgage Broker shall pay to FCM the amount set forth in FCM's notice of Mortgage Broker. An early payoff period is defined as a period of 180 days from funding. An early payment default is defined as borrower[s]'s failure to make any of the first four (4) monthly payments subsequent to the loan purchase date, as described in the loan documents at the time of closing.

## **8. Disclosure of Information; Confidentiality.**

All documents, forms, publications, memoranda, correspondence, files, contacts, client lists, financial tables, records, procedures, sales aids, techniques, processes, lending programs, the Lender Requirements and all other material and information directly or indirectly given to or received by Mortgage Broker during the term of this Agreement that relate in any manner to any business or operation that First Community Mortgage Inc. is engaged in, or intends at any time to become engaged in, are and shall remain the proprietary and confidential property of First Community Mortgage Inc. Upon the termination of this Agreement for any reason, Mortgage Broker shall promptly deliver to First Community Mortgage Inc. all such material and information. During and after the term of this Agreement, Mortgage Broker shall not disclose to any person any proprietary and/or confidential information relating to the business of FCM.

## **9. Cost and Expenses.**

Mortgage Broker shall, during and after the term of this Agreement, be responsible for and shall promptly pay in full all costs and expenses directly or indirectly incurred in performing its duties hereunder. Except as specifically set forth in this Agreement, Mortgage Broker shall have no right to reimbursement of any such costs or expenses from FCM.

## **10. Termination of Agreement.**

This Agreement may be terminated by either party, with or without cause, upon ten (10) days written notice to the other. Termination of this Agreement shall not affect the Parties' respective obligations with respect to Application Packages submitted by Mortgage Broker to First Community Mortgage, Inc. and to Loans funded by First Community Mortgage, Inc. prior to the effective date of the termination of this Agreement. Termination of this Agreement shall not extinguish Mortgage Broker obligations to FCM as provided in this Agreement. Upon FCM's termination of this Agreement due to Mortgage Broker's breach of a representation or warranty contained herein, or upon First Community Mortgage Inc.'s discovery of fraud, FCM may, in its sole discretion, elect to fund any other Application Package submitted by Mortgage Broker that has not yet closed, but shall be under no obligation to do so.

**11. Mandatory Binding Arbitration.** It is the intent of the Parties to this Agreement that any and every dispute by and between them, including, without limitation, any dispute arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, be resolved by mandatory binding arbitration. This includes, but is not limited to the determination of the scope or applicability of this agreement to arbitrate. The arbitration shall be conducted before a sole arbitrator in accordance with the laws of the State of Tennessee for agreements made in and to be performed in Tennessee. The arbitration shall be administered by the American Arbitration Association ("AAA") pursuant to its Commercial Arbitration Rules and Mediation Procedures. Arbitration initiated by Mortgage Broker against Lender shall be conducted in the County of Bedford, Tennessee. Arbitration initiated by Lender against Mortgage Broker shall be conducted in the state and county in which Mortgage Broker's main office is located, or in the nearest state and/or county thereto in which the AAA maintains a permanent office. Judgment on any award may be entered in any court having jurisdiction. The provisions of this Section 12 may be enforced by any court having jurisdiction, and the Party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the Party against whom enforcement is ordered.



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## 12. Status of Mortgage Broker as Independent Contractor.

Lender and Mortgage Broker acknowledge and agree, and Mortgage Broker covenants, warrants and represents to First Community Mortgage, Inc., that Mortgage Broker/ is an independent contractor. Nothing in this Agreement is intended, nor shall anything in this Agreement be construed, to make or deem Mortgage Broker a joint venture, partner, representative employee or agent of FCM, and Mortgage Broker is expressly prohibited from holding itself out as such, nor shall Mortgage Broker hold itself out at any time as the representative of FCM in any area, state or jurisdiction in which FCM conducts its business. Mortgage Broker is expressly prohibited from using First Community Mortgage, Inc.'s name in any advertising.

## 13. Corporate Documents; Licenses; Authorities.

In connection with Mortgage Broker representations and warranties as set forth in Sections 4.1, 4.2, and 4.3, prior to execution of this Agreement, Mortgage Broker shall have delivered to First Community Mortgage, Inc., as applicable:

13.1 a current certificate of its jurisdiction of incorporation to the effect that Mortgage Broker is a corporation or other entity validly existing and in good standing under the law of such jurisdiction;

13.2 a certificate of the duly authorized secretary or assistant secretary of Mortgage Broker attaching: (i) evidence of such corporate action or authorization as is necessary to approve of this Agreement and the authorization of the officers of Mortgage Broker to sign this Agreement; and (ii) specimen signatures of the officers of Mortgage Broker authorized to sign this Agreement;

13.3 a copy, certified as true by the secretary or assistant secretary of Mortgage Broker, of the charter and the by-laws of Mortgage Broker; and

13.4 all other documents, instruments and writings required to be delivered by Mortgage Broker pursuant to this Agreement, including, but not limited to, copies of all licenses issued by any relevant governmental authority and those documents set forth in Sections 4.1 and 4.2 of this Agreement.

If requested by First Community Mortgage, Inc., Mortgage Broker shall annually hereafter, within 120 days of Mortgage Broker's fiscal year-end, also deliver to FCM all corporate documents referenced in Section 4 reflecting all transactions and changes occurring in the prior fiscal year. Mortgage Broker shall further deliver to FCM, upon request, such financial information concerning Mortgage Broker as FCM may require from time to time including, without limitation, the balance sheets of Mortgage Broker, and related statements of income, changes in stockholder equity and cash flows.

## 14. Miscellaneous.

14.1 Right to Offset. Amounts owed by Mortgage Broker to First Community Mortgage, Inc. under this Agreement may, at FCM's option and at its sole discretion, be offset by FCM against any payments then or thereafter owed by FCM to Mortgage Broker.

14.2 Books and Records. Mortgage Broker shall maintain and retain accurate books and records with respect to all Application Packages for the time period required by applicable law or as may be required by First Community Mortgage, Inc. FCM and its agents or representatives shall have the right to inspect Mortgage Broker books and records during regular business hours and upon reasonable notice in order to confirm the accuracy of information supplied by Mortgage Broker to FCM with respect to any Application Packages and this Agreement and to confirm Mortgage Broker's compliance with this Agreement.

14.3 Notices. All notices required hereunder shall be in writing, delivered to the last known addresses of the parties, as may amended from time to time by written notice, and shall be deemed to have been given, made, and received only: (a) upon personal delivery to a Party; (b) one (1) business day after the date of deposit if delivered by a nationally recognized courier service offering guaranteed overnight delivery; or (c) five (5) business days after deposit in the United States first class mail, certified mail, postage prepaid, return receipt requested.

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14.4 Electronic Delivery and Amendment to Agreement and the Lender Requirements. Notwithstanding the requirements of Section 14.3 of this Agreement, the Parties agree that First Community Mortgage, Inc. may deliver the Lender Requirements and/or the Current Agreement, and all amendments thereto, by posting a copy of the current version of the Agreement and Lender Requirements and such amendments at a website identified by Lender or by transmitting an electronic version of the Lender Requirements and/or the current version of the Agreement and such amendments to an e-mail address provided by Mortgage Broker.

14.5 Electronic Consent by Lender. Unless an electronic communication specifically contains a statement that the communication is intended as an electronic signature or consent by First Community Mortgage, Inc., such communication shall not constitute an electronic signature or consent by FCM pursuant to the Electronic Signatures in Global and National Commerce Act or comparable state or federal laws or regulations.

14.6 Attorney's Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement, the repurchase of a Loan or Loans, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and other costs incurred in that action or proceeding, whether or not a lawsuit is filed, in addition to any other relief to which it or they may be entitled.

14.7 Assignment. Mortgage Broker may not assign this Agreement or its duties herein, and any attempted assignment shall be void. Lender may assign this Agreement and its rights and duties hereunder without the consent of Mortgage Broker.

14.8 Entire Agreement; Amendment. This Agreement, together with all exhibits, the Approval Letters and the most current version of the Lender Requirements, constitutes the entire understanding and agreement of the Parties hereto with respect to the subject matter hereof, and any other agreements, express or implied, entered into prior to this Agreement are null and void and of no force or effect. Lender may amend the terms of this Agreement by delivering Mortgage Broker an amended Agreement in accordance with Section 14.3 or Section 14.4 of this Agreement. Such amendment(s) shall constitute the current version of the Agreement and deemed accepted and incorporated into this Agreement if Mortgage Broker submits an Application Package to First Community Mortgage Inc. subsequent to the date that the amended Agreement is delivered to Mortgage Broker. Mortgage Broker may not supplement, modify or amend this Agreement unless such supplement, modification or amendment is agreed to in writing by an authorized representative of First Community Mortgage Inc.

14.9 Waivers or Remedies. First Community Mortgage, Inc.'s failure or delay to audit any Loan prior to funding 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.

14.10 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.

14.11 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 First Community Mortgage, Inc. has disbursed any loan proceeds, Mortgage Broker shall promptly return to FCM all amounts collected by Mortgage Broker from Borrower in connection with the Loan, regardless of whether such amounts were disbursed by Mortgage Broker to the other parties.

14.12 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee without consideration of choice of law principles.

# BROKER AGREEMENT

14.13 Choice of Forum. Any judicial proceeding brought against any of the Parties hereto with respect to this Agreement shall be brought in any court of competent jurisdiction in Bedford County, Tennessee or in the Federal District Court for the District of the State of Tennessee, irrespective of where such Party may be located at the time of such proceeding, and by execution and delivery of this Agreement, each of the Parties hereby consents to the exclusive jurisdiction of any such court and waives any defense or opposition to such jurisdiction.

14.14 Waiver of Jury Trial. EACH PARTY HERETO WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

14.15 No Third-Party Beneficiary. This Agreement is intended to facilitate the submission of Application Packages by Mortgage Broker to Lender, and no third-party beneficiary rights are intended or may be implied in any manner or form, including any rights to benefits with respect to a Borrower.

14.16 Mortgage Broker Affiliates. Mortgage Broker shall disclose to First Community Mortgage, Inc., upon request, the identity of all Affiliates involved directly or indirectly in the provision of the Loan Services and/or in the discharge of Mortgage Broker obligations under this Agreement. For purposes of this section 14.16, the term "Affiliates" shall mean and refer to any person directly or indirectly controlling, controlled by, or under common control with Mortgage Broker.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as set forth above on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Mortgage Broker Name)

First Community Mortgage, Inc.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title