

## **BROKER TO BROKER AGREEMENT**

This Agreement is dated as of \_\_\_\_\_, 20\_\_ between Trimark Funding, Inc., a California corporation, California Department of Real Estate Broker's License No. 01281254, located at 5101 E. La Palma Ave., Ste. 206, Anaheim, CA 92807 ("LENDER") and \_\_\_\_\_, California Department of Real Estate Broker's License Number \_\_\_\_\_ located at \_\_\_\_\_ ("BROKER"). This Agreement arose because:

A. BROKER and LENDER are mortgage brokers that are and will remain licensed as such by the California Department of Real Estate.

B. BROKER originates a wide variety of mortgage applications. It desires from time to time to submit mortgage applications (the "Applications") from loan applicants ("Applicants") to LENDER for its consideration.

C. The purpose of this Agreement is to serve as a master agreement governing all Applications BROKER submits to LENDER.

NOW, THEREFORE, the parties agree as follows:

1. Non-Exclusive Arrangement. BROKER may submit and LENDER will consider Applications for mortgage loans. BROKER shall have no obligation to submit Applications on an exclusive basis, but shall not submit any Application concurrently to more than one mortgage company. Likewise, LENDER shall be free to obtain Applications from other sources. LENDER shall, from time-to-time, supply BROKER with rate sheets and underwriting criteria to assist BROKER in selecting Applications that are likely to qualify for loans arranged by LENDER.

2. Contents of Applications. Applications shall consist at a minimum of a completed loan application, credit report and property comparables. It shall be BROKER'S duty to perform due diligence on all information submitted. BROKER shall be solely responsible for all costs of its origination effort and the charges it incurs for credit report, loan officer compensation, marketing and other costs.

3. Compliance with RESPA. LENDER and BROKER shall each provide in their disclosures an estimated disclosure of fees anticipated by each BROKER. In addition, each submittal to LENDER shall constitute a representation and warranty that BROKER has performed sufficient services to qualify for compensation under the safe harbor provisions of the Real Estate Settlement Procedures Act and Regulation X contained in the Statement of Policy 1999-1 Regarding Lender Payments to Mortgage BROKERS, Federal Register Docket No. FR-4450-N-01 and Statement of Policy 2001-1 Clarification of Policy 1999-1 Regarding Lender Payments to Mortgage Brokers, Federal Register Docket No. FR 7414-N-01, including taking the application and providing at least five out of the other thirteen qualifying service categories:

- A. Initiating/ordering VOE's (verification of employment) and VOD's (verifications of deposits)
- B. Initiating/ordering requests for mortgage and other loan verifications
- C. Initiating/ordering appraisals

- D. Initiating/ordering inspections or engineering reports
- E. Providing disclosures (truth-in-lending, good faith estimate, others) to the Borrower
- F. Ordering legal documents
- G. Determining whether the property was located in a flood zone or ordering such service
- H. Analyzing the Applicant's income and debt and pre-qualifying the Applicant to determine the maximum mortgage that the prospective Borrower can afford
- I. Educating the Applicant in the home-buying and financing process, advising the Applicant about the different types of loan products available, and demonstrating how closing costs and monthly payments would vary under each product
- J. Collecting financial information (tax returns, bank statements) and other related documents that are part of the application process
- K. Assisting the Applicant in underwriting and clearing credit problems
- L. Maintaining regular contact with the Applicant, Realtors and Lender between application and closing to apprise them of the status of the application and to gather any additional information as needed
- M. Participating in the loan closing

4. Compensation. Contingent upon the closing of a loan on the submitted Application and the disbursement to LENDER of its compensation in the transaction, LENDER shall pay BROKER for its services a individually negotiated fee for its services. The payment shall be paid directly from the loan escrow when feasible or if not, within 72 hours of LENDER's receipt of such compensation. LENDER shall have the absolute discretion as to the compensation to be charged on all loans it submits to lenders. If LENDER, in its absolute discretion, allows a borrower to rescind a loan after it is funded, the parties shall return their compensation to the extent necessary to accomplish the rescission.

5. Indemnification.

(a) By LENDER. LENDER shall indemnify and hold BROKER and its agent harmless from any and all demands, costs, judgments and claims of any kind (including attorneys fees and court costs) arising out of claims on an Application or resulting Loan arising from the acts or omissions of LENDER or its personnel or agents after the submission of an Application to LENDER.

(b) By BROKER. BROKER shall indemnify and hold LENDER and its agents harmless from any and all demands, costs, judgments and claims of any kind (including attorneys fees and court costs) arising out of claims on an Application or resulting Loan arising from the acts or omissions of BROKER or its personnel or agents before the submission of an Application to LENDER.

6. Compliance with Laws. Both parties shall in all of their activities under this Agreement comply with the laws of the State of California and the United States. All activities shall be conducted in strict accordance with the California Real Estate Law applicable to real estate brokers. If either party's real estate broker's license ceases to be in good standing, that party shall immediately notify the other in writing.

7. Arbitration Agreements with Applicants. LENDER shall require all Applicants to execute an arbitration agreement requiring the Applicant to arbitrate any and all claims the Applicant may have with LENDER, the lender and any other broker in the transaction, including BROKER. If an Applicant initiates arbitration with LENDER, BROKER stipulates to join in such arbitration if it is named in the claim or has a cross-claim against LENDER.

8. Arbitration of Disputes. The parties agree that any dispute between them shall be decided by binding arbitration under the rules of the American Arbitration Association. The prevailing party shall be entitled to an award of its attorney and accounting fees from the losing party and arbitration costs. All hearings shall be in the County of Oz unless otherwise agreed or ordered by the arbitrator(s). Limited discovery shall be conducted in the discretion of the arbitrator(s).

9. Status of Parties. The parties are independent contractors not the partners, joint venture associates or agents of the other. Neither party has any power to bind or to represent the other. LENDER is not the agent of any Applicant.

10. Miscellaneous. This Agreement constitutes an integrated agreement between the parties and supercedes all previous agreements and negotiations. It shall be construed as if drafted by both parties. This Agreement may only be modified or waived by an agreement in writing. This Agreement may be executed in one or more counterpart or signature pages, each of which shall be deemed an original and together which shall comprise one instrument. A facsimile of this Agreement bearing the signature of a party shall have the same legal effect as an original.

The parties have executed this Agreement to be effective on the date first set forth above.

Trimark Funding, Inc.,  
a California corporation,

\_\_\_\_\_  
a \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Its \_\_\_\_\_