

## **MORTGAGE BROKER AGREEMENT**

This Mortgage Broker Agreement (the "Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ ("Mortgage Broker") located at \_\_\_\_\_, and DeepGreen Bank, FSB ("Lender"), 5800 Lombardo Center, Suite 100, Seven Hills, OH 44131, (collectively, the "Parties").

**WHEREAS**, Lender is engaged in the business of originating and servicing residential mortgage loans;

**WHEREAS**, Mortgage Broker is engaged in the business of assisting qualified borrowers in obtaining residential first and second mortgage loan financing from lenders;

**WHEREAS**, Lender and Mortgage Broker wish to establish a non-exclusive relationship whereby Mortgage Broker will submit loan applications for residential mortgage financing to Lender on behalf of Mortgage Broker's customers for loan approval and funding by and in the name of Lender; and

**WHEREAS**, Lender and Mortgage Broker intend to have this Agreement govern their respective rights, duties and obligations.

**NOW THEREFORE**, in consideration of the mutual promises made in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgage Broker and Lender agree as follows:

### **1. Mortgage Broker Services.**

**1.1** From time to time, Mortgage Broker may present Lender with mortgage loan applications (each, an "Application") from applicants ("Applicant(s)") resulting from and supported by services performed by the Mortgage Broker ("Services") as set forth on the invoice submitted with the Application to Lender. Lender, in its sole discretion may make loans (each, a "Loan") to such Applicants as Lender may elect. Nothing in this Agreement shall obligate Lender to fund any Loan.

**1.2** Lender shall provide notification of its decision concerning an Application directly to the Applicant(s). At Mortgage Broker's request, and in compliance with all applicable laws, Lender may share with Mortgage Broker the information concerning its decision. Prior to sharing such information, Lender may, in its sole determination, satisfy itself as to compliance with applicable law. Mortgage Broker acknowledges that Lender is not a "consumer reporting agency" as defined by the Fair Credit Reporting Act ("FCRA") and that Lender does not intend to communicate any information that would be deemed to be a "consumer report" within the meaning of 15 U.S.C. §1681a(d). Mortgage Broker shall (a) take no action which would cause or (b) fail to take such action which is necessary to prevent Lender from being a "consumer reporting agency" within the meaning of FCRA. The actions Mortgage Broker shall take shall include providing the Applicant(s) with the name and address of Lender.

## **2. Compensation for Services.**

**2.1** In exchange for the Services, Lender shall pay Mortgage Broker fees in accordance with Schedule 1 attached hereto. Subject to all federal and state laws, regulations, and agency directives, including but not limited to the Real Estate Settlement Procedures Act (RESPA), (collectively, the “Applicable Law”), the fees paid to Mortgage Broker under this Agreement shall be reasonably related to the value of the Services. To the extent that any fees paid to Mortgage Broker pursuant to this Agreement are deemed by Applicable Law, to be in excess of the reasonable value for Services rendered, Mortgage Broker shall return that portion of the fees necessary to comply with the Applicable Law.

**2.2** If in the reasonable discretion of any Party, the compensation arrangement of this Agreement fails to comply with any Applicable Law, or any Party is advised by counsel or a regulatory body with jurisdiction over its activities to terminate or modify the Agreement or compensation arrangements to achieve compliance with Applicable Law, the other Party shall cooperate to the extent necessary to achieve such compliance, including, but not limited to, executing appropriate amendments to the Agreement. The Parties agree that appropriate adjustments will be made to the compensation structure to resolve any violation of Applicable Law determined by a regulatory body. The amount of any retroactive adjustments shall not exceed amounts actually paid or owing. Notwithstanding anything to the contrary in this Agreement, if the Parties cannot agree on the necessary changes to bring the compensation arrangement into compliance with all Applicable Laws, then either Party may immediately terminate this Agreement upon written notification to the other Party.

**2.3** Subject to Lender’s offset rights set forth on Schedule 1, Lender shall pay Mortgage Broker the amount owed to Mortgage Broker under this Agreement for a particular month by the fifteenth (15<sup>th</sup>) day of the following month by check or, at Mortgage Broker’s request, by a direct deposit to an account at a financial institution designated by the Mortgage Broker by means of an automated clearing house (ACH) transaction.

**3. Representations, Warranties.** Mortgage Broker hereby represents and warrants to Lender that, at the time of submission of each Application by Mortgage Broker to Lender:

**3.1** Mortgage Broker is a business entity, duly organized, lawfully existing and in good standing under the applicable laws of the state of its organization, and is properly qualified to do business in the states Mortgage Broker does business. Mortgage Broker’s execution and performance of this Agreement does not violate Mortgage Broker’s charter, certificate of organization, by-laws, or other organization documents as the case may be, nor any contract or agreement to which Mortgage Broker is a party, nor any statute, ordinance, regulation or rule of law.

**3.2** Mortgage Broker does not need to obtain the consent of any governmental regulatory agency, unless such consent has been obtained, to perform its obligations hereunder.

**3.3** Mortgage Broker has complied in all respects with the requirements of all laws, regulations and licensing requirements applicable to the transactions contemplated by this Agreement and has filed with the proper authorities all statements and reports required by all laws, rules, regulations and ordinances to which Mortgage Broker is subject. There are no legal or administrative proceedings of any nature pending against Mortgage Broker or its officers or directors in their official capacity as officers or directors of Mortgage Broker.

**3.4** The execution of this Agreement and the consummation of the transactions contemplated hereby will not subject Lender to any liability, duty or obligation arising from any acts, including but not limited to, any omission or commission, by Mortgage Broker, its officers, directors, agents or employees, taking place on, prior to, or after the date hereof, or to any liability, duty or obligation to which Mortgage Broker is, has been or will be bound, whether with respect to the employees of Mortgage Broker or otherwise.

**3.5** Mortgage Broker is not a party to or bound by any written or oral agreement granting to any person an option or right of first refusal or other arrangement to acquire directly or indirectly any Application.

**3.6** Mortgage Broker has not made any agreement or reached any understanding with any Applicant for any change in the interest rate, schedules of payment or other terms and conditions varying from those set forth in Lender's documents on the Loan.

**3.7** With respect to each Application, the Applicant is the true and only obligor on the Application, is the real party in interest thereon and is not a mere "dummy," "figurehead," or representative for any other person or organization.

**3.8** Mortgage Broker shall comply with all requirements of RESPA, including but not limited to:

**3.8.1** giving all Applicants a Good Faith Estimate of Closing Costs, which itemizes the fees for Services performed by Mortgage Broker, and

**3.8.2** disclosing, among other required disclosures, all compensation Mortgage Broker has received or will receive from any other source in connection with transactions performed under this Agreement.

**3.9** Mortgage Broker has verified and warrants to be true all of the information contained in any Application and any related documents submitted to the Lender, including, without limitation, all wire transfer instructions and information provided in connection with the disbursement of any Loan.

**4. Customer Lists.** Mortgage Broker shall not sell or otherwise transfer any list of Applicants to whom Lender has made a Loan hereunder without the prior written consent of Lender, and shall comply with all state and federal privacy regulations. Nothing in this Agreement shall limit either Party from working in the best interest of the Applicant.

## **5. Indemnification.**

**5.1** The representations, warranties, covenants, agreements and every other obligation contained in this Agreement shall survive the transactions provided for herein and shall be fully applicable whether or not Lender relied thereon or has knowledge of any facts at variance therewith.

**5.2** Mortgage Broker will indemnify, defend and hold Lender harmless from any liability, loss, injury or damages, including but not limited to consequential damages, together with all reasonable costs and expenses relating thereto, including but not limited to legal and accounting fees and expenses, arising out of or resulting from the negligence and/or willful misconduct of Mortgage Broker's agents, employees, officers and representatives, and/or the breach of any of the representations, warranties, covenants, agreements or any other obligation of Mortgage Broker hereunder.

**5.3** Lender shall notify Mortgage Broker within a reasonable period of time after the institution or commencement of any judicial or administrative proceeding or any investigation by governmental bodies of competent jurisdiction which might reasonably be expected to result in any liability, loss, injury or damages to Lender covered hereunder. Lender shall have the complete and exclusive right to determine and control the conduct and defense of such legal proceeding or investigation, including without limitation the right to decide whether such proceeding or investigation should be settled or continued, but Mortgage Broker shall have the right to engage counsel and to participate in the defense of any such action at its own expense. If Lender fails to notify Mortgage Broker as provided herein of such legal proceeding or investigation, such failure shall not relieve Mortgage Broker of any obligation to indemnify and hold Lender harmless hereunder except to the extent that Mortgage Broker has incurred damages directly resulting from such failure by Lender.

## **6. Modifications and Amendments.**

**6.1** This Agreement may not be modified or amended nor its provisions waived except, in each instance, by

**6.1.1** an agreement in writing executed by duly authorized agents of both Parties, or

**6.1.2** an addendum posted to the Lender's website and assented to by Mortgage Broker within thirty (30) days after posting.

**6.2** This Agreement and all other terms and provisions herein set forth shall be binding upon and inure to the benefit of the respective successors and assigns of both Parties.

**7. Notices.** All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed given if delivered personally, transmitted by facsimile, by e-mail, or mailed by registered or certified mail

with postage prepaid and return receipt requested, or sent by commercial overnight courier, courier fees prepaid, to the Parties at the following addresses:

If to Lender, to:  
DeepGreen Bank, FSB  
Attn: \_\_\_\_\_  
5800 Lombardo Center  
Suite 100  
Seven Hills, Ohio 44131  
  
Phone: 216-606-\_\_\_\_\_  
Fax: 216-606-\_\_\_\_\_  
E-mail: \_\_\_\_\_

With a copy to:

If to Mortgage Broker to:  
[At the address contained Lender's files]

Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

or to such other address as Mortgage Broker or Lender shall have specified in writing to the other Party. All such notices or other communications shall be deemed to have been received: (i) on the date of personal delivery, if sent by personal delivery; (ii) on the date of facsimile transmission (and machine confirmed receipt), if sent by facsimile transmission; (iii) on the third business day after being mailed by registered or certified mail, if sent by registered or certified mail; (iv) on the next business day after being sent via commercial overnight courier, if sent by commercial overnight courier; and (v) on the date sent, if sent via email after receipt of confirmation that such email has been electronically delivered to addressee.

**8. Integration.** This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated hereby. This Agreement supersedes and incorporates all prior or contemporaneous agreements, understandings, writings, statements, whether oral or written, made in connection with the subject matter of this Agreement and the negotiation hereof. If any representation, warranty, promise or statement has not been written specifically into this Agreement, then such representation, warranty, promise or statement shall not be binding upon the parties hereto.

**9. Assignment.** The rights and obligations of the Mortgage Broker hereunder shall not be assignable except with the written consent of the Lender.

**10. Termination.** Either Party shall have the right to terminate this Agreement upon thirty (30) days notice to the other Party. Such termination shall have no effect upon any liability of either Party arising as the result of any act or omission occurring on or before the effective date of such termination.

**11. Governing Law.** This Agreement and each term or provision hereof, and all of the respective rights, duties, responsibilities, obligations and liabilities of the Parties, shall be interpreted and construed pursuant to and in accordance with the laws of the State of Ohio.

**12. Arbitration.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Any arbitration proceeding shall take place in Cleveland, Ohio.

**13. Severability.** If any provision of this Agreement is held to be void or unenforceable by any court of competent jurisdiction or any governmental regulatory agency, such provision shall be considered by all Parties to be severed from this Agreement. All remaining provisions of this Agreement will be considered by the parties to remain in full force and effect.

**14. No Agency or Joint Venture.** This Agreement will not be deemed to constitute the Parties of this Agreement as partners or joint venturers. Mortgage Broker is an independent contractor to Lender and neither Party shall be the agent of the other. In no event may Mortgage Broker commit or represent that it possesses the authority to commit Lender to any contract, transaction or Loan without the prior express and specific written authorization from an authorized officer of Lender.

**IN WITNESS WHEREOF,** the Parties have signed this Agreement as of the date first written above.

**DeepGreen Bank, FSB**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

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

**Mortgage Broker**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

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

**SCHEDULE 1**

To Mortgage Broker Agreement dated \_\_\_\_\_, 20\_\_ between DeepGreen Bank, FSB (the “Lender”) and \_\_\_\_\_ (“Mortgage Broker”).

Effective Date of Schedule: \_\_\_\_\_, 20\_\_.

Subject to the rights of setoff set forth below, Lender shall pay to Mortgage Broker on or before the 15<sup>th</sup> day of the calendar month the following fees in connection with each Loan approved and closed by Lender during the previous calendar month resulting from an Application presented by Mortgage Broker.

- A. Home Equity Line of Credit Loan - \$250.00
- B. Home Equity Loan - \$250.00

Provided, however, that in the event any Loan is paid off and closed within ninety (90) days of the date of scheduled first payment date (an “Early Payoff Loan”), Lender shall owe no fee to Mortgage Broker in connection with such Loan and Lender shall have the right to demand reimbursement of any fee previously paid in connection with an Early Payoff Loan from Mortgage Broker upon ten (10) days notice from Lender. Lender reserves the right to offset against any fees owed to Mortgage Broker any and all amounts previously paid in connection with one or more Early Payoff Loan.