

## **FHA PRINCIPAL and AUTHORIZED AGENT AGREEMENT (FHA-Insured Title II Mortgage Loans)**

This FHA Principal and Authorized Agent Agreement (“Agreement”) is dated as of \_\_\_\_\_, by and between Mortgage Services III, LLC (referred to as “Agent” in this Agreement), and \_\_\_\_\_, (referred to as “Principal” in this Agreement). Agent and Principal are referred to in this Agreement, collectively, as the parties.

### **RECITALS**

WHEREAS Principal is in the business, among other things, of originating FHA Title II mortgages loans ("Loans") to be insured by the Federal Housing Administration ("FHA");  
WHEREAS Principal wishes to be able to offer Loans to its customers;  
WHEREAS Agent is in the business of originating Loans to be insured by the FHA; and,  
WHEREAS Agent specializes in originating and underwriting Loans.  
NOW, THEREFORE, in consideration of the foregoing and of the mutual promises made herein, and other good and valuable consideration, Agent and Principal hereby agree as follows:

### **AGREEMENT**

**1. Effective Date; Term.** This Agreement shall be effective, following its due execution by each of Principal and Agent, upon Agent notifying Principal that Agent has registered electronically as Agent of Principal upon the books and records of the FHA. This Agreement shall remain in full force and effect until it is terminated by either of the Parties under Section 17 of the Agreement.

**2. FHA Mortgagee Approval.** Principal and Agent both are, and shall remain so throughout the term, properly licensed in each state, or exempt, in which they conduct mortgage business, and Agent is a Non-Supervised FHA-approved mortgagee, and Principal is a Supervised or Non-Supervised FHA-approved mortgagee, as applicable, each in good standing with the FHA. Agent is and shall maintain its unconditional “Direct Endorsement” authority approval in good standing with the FHA. Principal shall maintain its approval as Mortgagee, and also must have and maintain such “Direct Endorsement” authority as of July 1, 2011.

**3. FHA Jurisdictional Approval.** Principal is and shall remain so throughout the term of this Agreement, duly approved by the FHA to originate Loans in each and every locality in which the collateral securing such Loans is located.

**4. Loans Rejected by Principal .** Principal shall not submit to Agent any loan application for a Loan, which was simultaneously submitted to another lender or was previously rejected by the Principal or another Supervised or Non-Supervised FHA-approved mortgagee, as being ineligible for FHA insurance.

**5. Further Assurances.** Loans subject to this Agreement will be insured by the FHA and may be closed either in the name of the Principal or Agent. Each party agrees to execute and deliver such instruments and take such actions as the other party may, from time to time, reasonably request, in order to effectuate the purposes and to carry out the terms of this Agreement. Without limitation of the foregoing, Principal agrees to do all things and to execute or otherwise obtain for Agent all additional documentation

necessary for Agent to properly complete the approval, funding, or insuring of any Loans.

**6. Non-Assignability.** Neither party may assign this Agreement. No loan application for any Loan may be submitted to Agent for which loan applications were solicited or processed by any entity or any employee of any entity other than the Principal. Agent will underwrite applications for Loans that Principal sends to it and will not assign or contract out such underwriting.

**7. Confidentiality.** The parties agree that the terms and conditions of this Agreement, Agent's Guidelines and any advice or agreement to fund or close any Loans hereunder shall be kept confidential and their contents shall not be divulged to any party without the other's consent except to the extent that it is necessary for either party to disclose any such information in accordance with applicable law or in working with legal counsel, auditors, taxing authorities or other governmental agencies.

**8. No Third Party Originations.** Principal agrees that, during the term of this Agreement, Principal shall maintain an experienced, qualified and approved originations staff and shall cause such staff to perform all origination functions to be performed by Principal under this Agreement in compliance with the requirements of this Agreement, HUD/FHA requirements, and all modifications thereto. Principal shall cause the actual originations and processing of Loans to be done only by employees of Principal who are qualified to originate, and have substantial experience originating, such loans. Principal shall not submit to Agent any loan application for Loans that was taken by any third party, including any such loan application taken by any Authorized Principal or Sponsored Loan Correspondent of the Principal.

**9. Non-Exclusive Agreement.** Nothing in this Agreement shall be construed to create an exclusive relationship in any market or geographic area between Principal and Agent. Principal acknowledges that Agent may provide the same or similar services to other Principal Mortgagees.

**10. Origination and Submission of Loan Applications.** Principal may from time to time compile application information from prospective borrowers for Loans and submit to Agent a completed, original loan application package for a Loan together with such related materials required to process and underwrite the Loan. In the event any form is incomplete or Agent requires additional information to evaluate the loan application, Agent will notify Principal in a timely manner and Principal will use its best efforts to assist in obtaining such additional material.

**11. Principal's Responsibilities.** Principal will initiate, complete and obtain a loan application, and perform the following services in connection with each Loan: (a) educate the applicant (in a face-to-face meeting, where required) in the mortgage financing process and the different types of mortgages products available; (b) analyze prospective borrowers' credit qualification information, including (i) the prospective borrower's home value (ii) that the prospective borrower is the primary resident thereof, and (iii) ascertaining any outstanding liens that exist on the prospective borrower's home, including the amount or value thereof, and (iv) any other liens against the prospective borrower personally, including federal tax liens (which may be discovered through the use of a credit report); (c) based on the applicant's credit qualification information, pre-qualify and counsel prospective borrowers regarding mortgage loans; and (d) maintain regular contact with the applicant during the period between loan

application and closing to apprise the applicant of the status of the loan application and the requirements to satisfy any outstanding conditions prior to closing, and to gather additional credit, financial and other information, as needed. To the extent not provided above, Principal will perform the following additional services as requested by Agent: (a) initiate/order credit reports and requests for mortgage and other required verifications; (b) initiate/order appraisals of the property proposed as security for the loan, in compliance with Appraisal Independence Requirements (c) initiate/order inspections or engineering reports, if applicable; (d) provide disclosures (truth-in-lending, good faith estimates, etc.) to the borrowers as required by applicable law or by Principal; (e) collect financial information and other related documents that may be required or necessary as part of the loan application process; and (f) participate in the loan closing. Agent shall review the accuracy and completeness of all information provided by loan borrowers, and shall at all times maintain the integrity of Agent's loan application and processing operations. It is Principal's responsibility to ensure that (i) Principal and its employees at all times maintain and use complete, up-to-date versions of the FHA guidelines and Agent's Guidelines, including all Mortgagee Letters, Handbooks, updates, Bulletins, Announcements, Memorandums and product descriptions, and (ii) all of its employees performing origination duties and functions pursuant to this Agreement remain informed and knowledgeable regarding such guidelines and all Agent's Guidelines.

**12. Agent's Underwriting Responsibilities.** Agent shall make loan application approval decisions regarding Loans, and the Agent will make the underwriting determination in connection with Loans regardless of Principal having a "FHA Direct Endorsement" approval status. If Agent determines that the application does not qualify as a Loan, Agent will return the loan application package to the Principal. Principal shall ensure that each loan application is completed within a reasonable time.

**13. Closing, Funding and Insuring of Loan Transactions; Principal Compensation; Ownership of Loans.** Agent shall have a reasonable time to review and underwrite completed loan application packages for Loans. Once Agent has completed its review of a loan application package, Agent will notify Principal whether such proposed Loan should be approved, subject to any Closing Conditions. Loans may be closed and funded in either Principal's or Agent's name. The Party who closes and funds a Loan accepts and agrees to fulfill any and all HUD requirements of procuring FHA/HUD insurance. Principal will be compensated in connection with closed Loans, as agreed between Principal and Agent with respect to each Loan or a class of Loans, pursuant to the Wholesale or Correspondent Agreement entered into between the parties. Principal hereby assigns to Agent each Loan, Agent will own loan application packages transferred to it by Principal under and pursuant to this Agreement, and Agent shall own the Loans originated and closed under this Agreement, and shall have the power and may deal with such Loans as it sees fit, without notification or further compensation to Principal. Prior to the closing of any Loans, and the title insurance company issuing the mortgagee's title insurance policy required under the terms of Agent's Guidelines shall have delivered an "Insured Closing Protection Letter" (or similar instrument) naming the Agent as insured or covered party with respect to the settlement of such a loan, holding insurance company liable for acts of its title principal that are within the scope of the title principal's authority while acting on the title insurer's behalf.

**14. Loan Documents.** After the closing of the transaction, at Agent's request, Principal will assist Agent in obtaining all instruments, recorded documents, title policy and other documents that relate to or evidence that the Loan was executed and/or issued at the closing in accordance with Agent's Guidelines.

**15. Representations and Warranties of the Parties.** Agent makes the following representations and warranties, and such shall continue until the termination of this Agreement: a. Agent is a duly organized and validly existing entity, is in good standing under the laws of the state of its organization, and is authorized to transact business in all states in which it transacts business. Agent possesses all necessary licenses and permits from all applicable federal, state, and local authorities to engage in the activities contemplated by this Agreement, and Agent is in compliance with all laws, rules, or regulations relating to licensing, qualification, or approval to originate loans as contemplated by this Agreement. This Agreement has been duly authorized and executed by Agent and is, or upon delivery will be, a legal, valid and binding obligation of Agent enforceable in accordance with its terms. The execution, delivery, and performance of this Agreement by Agent will not violate Agent's articles of organization, bylaws, any instruments related to the conduct of Agent's business, or any other Agreement or instrument to which Agent is a party. Neither Agent nor any of its agents know of any suit, action, legal or administrative or other proceeding pending or threatened against Agent which would materially affect its ability to execute, deliver, or perform its obligations under this Agreement.

**16. Representations and Warranties of the Principal.** Principal makes the following representations and warranties, and such shall be continuing until the termination of this Agreement: a. Principal is a duly organized and validly existing entity, is in good standing under the laws of the state of its organization, and is authorized to transact business in all states in which it transacts business. Principal possesses all necessary licenses and permits from all applicable federal, state, and local authorities to engage in the activities contemplated by this Agreement, and Principal is in compliance with all laws, rules, or regulations relating to licensing, qualification, or approval to originate loans as contemplated by this Agreement. This Agreement has been duly authorized and executed by Principal and is, or upon delivery will be, a legal, valid and binding obligation of Principal enforceable in accordance with its terms. The execution, delivery, and performance of this Agreement by Principal will not violate Principal's articles of incorporation or organization, bylaws, any instruments related to the conduct of Principal's business, or any other Agreement or instrument to which Principal is a party. Neither Principal nor any of its agents or employees know of any suit, action, legal or administrative or other proceeding pending or threatened against Principal which would materially affect its ability to execute, deliver, or perform its obligations under this Agreement. b. Principal has complied with all terms, conditions and requirements of Agent's Guidelines and this Agreement, and with all applicable federal, state and local laws relating to the loan application and origination process for Loans. c. Principal agrees to perform all loan processing functions in connection with Loans under this Agreement with the same care and diligence as an experienced prudent lender performing such duties in the industry with respect to similar mortgage loan products, and in any event with no less care and diligence than if it were originating Loans for its own account. d. None of the information or documentation contained in any loan

application submitted by Principal to Agent, and none of the representations made by Principal to Agent related to any loan application for Loans submitted by Principal, will contain any untrue information, statement, or representation or omit to state a fact necessary in order to make such information, statement or representation not misleading e. Principal has no knowledge nor any reason to know of any of the following: (i) fire, windstorm or other casualty damage to the Property; (ii) condemnation proceedings, (iii) detrimental conditions which could reasonably be expected to adversely affect the market value of the Property including, but not limited to, expansive soils, underground mines or storage tanks, soil subsidence, landfills, superfund sites, special study zones, or other similar conditions; (iv) outstanding mechanics' or materialmen's liens which are or may be a lien prior to, or of equal priority with, the lien of the security instrument except those that are affirmatively insured against by the title insurance policy; (v) outstanding oil, gas or other mineral interests now owned or controlled by the proposed borrower which might jeopardize the security interest in the Property or in any manner diminish the value of the Property; (vi) any circumstance or condition which might indicate that the appraisal is incomplete or inaccurate or that the value of the Property might not be at least the amount reported therein; or (vii) circumstances or conditions with respect to the Property that could reasonably be expected to cause private institutional investors to regard the Loan as an unacceptable investment or adversely affect the value or marketability of the Loan.

**17. Termination of Agreement.** Either party may terminate this Agreement with or without cause. Agent may terminate Principal's authority to serve as an Authorized Principal of Agent upon thirty (30) days prior written notice to Principal. Principal may terminate its status as an Authorized Principal of Agent upon thirty (30) days prior written notice to Agent. Further, this Agreement shall immediately terminate without notice upon HUD's withdrawal or revocation of either party's FHA approved Supervised or Non-Supervised mortgagee status or Direct Endorsement authority. All obligations or liability of either party to the other hereunder shall survive termination of this Agreement.

**18. Change of Ownership, Financial Condition or Senior Management.** Either party will promptly advise the other of any material adverse change in its business or financial condition, or any change in its ownership or senior management. Either party also shall inform the other in writing of any change in status of any required license and of any pending, threatened or final judicial, administrative or regulatory action or order which may impact the status of a required license or its eligibility under this program.

**19. Indemnification.** Principal shall indemnify and hold Agent, its successors and assigns, and their respective officers, directors, employees, shareholders, members, principals, contractors, affiliates and subsidiaries (collectively, the "Agent Indemnitees") harmless from and against, and shall reimburse Agent Indemnitees with respect to, any and all claims, demands, losses, damages, interest, penalties, fines, forfeitures, judgments and expenses (including, without limitation, reasonable fees and disbursements of counsel, and court costs) (any of the foregoing hereinafter referred to as a "Claim"), resulting from, relating to or arising out of, whether the result of negligent or intentional conduct or otherwise: (i) any breach of any representation or warranty made by Principal pursuant to this Agreement or Agent's Guidelines; (ii) any breach or failure to perform any covenant or obligation of Principal in this Agreement, the Wholesale or Correspondent Agreement or Agent's Guidelines; or (iii) any claim by a

borrower resulting from a failure or refusal to fund a loan application package which failure or refusal is related to information obtained from Principal or Principal's conduct. In the event it is discovered by Agent through its own investigation or through a HUD review or audit that fees have been charged to a borrower in excess of those allowed by the FHA or state regulations, Principal promptly shall refund such excess fees directly to a borrower or reduce the fees charged at closing and provide evidence to Agent that such has been done. Principal shall indemnify Agent for any damages related to any excess charges. Agent shall indemnify and hold Principal harmless against and in respect of, and shall reimburse Principal for, any and all claims, damages, liabilities, expenses, carrying costs, penalties, fines, forfeitures, actions, causes of action and judgments (including without limitation attorney's fees), arising out of, resulting from or relating to the non-fulfillment of any covenant, agreement or condition of Agent, contained in this Agreement.

**20. Rights to Obtain Certain Information.** During the term of this Agreement, if requested each party shall furnish the other with (i) copies of all renewals of its licenses and approvals within thirty (30) days after they are issued by the applicable regulatory authorities; and (ii) copies of its audited financial statements promptly after they become available. If requested, each party shall also provide any other information reasonably related to substantiating its continuing eligibility to participate in the loan programs subject to this Agreement as in effect from time to time. Each party acknowledges that each year it must certify to the FHA its current eligibility for approval as a FHA-approved Supervised or Non-Supervised mortgagee and pay the FHA annual fees, as applicable. Each party shall immediately notify the other if it loses its approval by the FHA.

**21. Adverse Action Notices.** Agent will not deliver to any loan applicant an "adverse action" notice required by Federal Reserve Board Regulation B, 12 C.F.R. §202.9 when Agent determines that an applicant does not qualify for a particular loan. Rather, Agent shall deliver notice to Principal specifying the reasons Agent has declined to approve a Loan. Principal shall forward an adverse action notice to the applicant no later than thirty (30) days following the date Agent received a "completed application" (as defined loan unless, within the thirty (30) day period, the loan has been approved by the Agent or another lender).

**22. Power of Attorney.** Principal does hereby make, constitute and appoint Agent and any of its properly designated officers, or employees as the true and lawful attorneys of Principal with power to sign the name of Principal on documents or instruments that are necessary in order to effectuate the terms and provisions of this Agreement, including, but not limited to, any assignments and/or endorsements of loan documents pertaining to any Loan funded under this Agreement. Agent is only an agent of Principal as specified under his section for the purposes of this Agreement, and no other purpose.

**23. Appointment of Trustee.** If loan documents are prepared by Principal, the appointment of trustees under any trust deeds or deeds of trust shall be subject to the approval of Agent.

**24. Use of Other's Name.** Without the prior written consent of the other, neither party shall use the corporate names, logos, brand names, trademarks, trade names or service marks of the other party or any of the other party's affiliates, or otherwise identify the other party or any of its affiliates, in the party's advertising, marketing or promotional material, publicity releases, communications with the press, proposals to

prospective clients, appraisers, or in announcements, customer listings, testimonials, websites and any other material distributed by or on behalf of the other.

**25. Real Estate Settlement Procedures Act.** In connection with this Agreement, Principal understands and acknowledges the following with respect to the requirements of the Real Estate Settlement Procedures Act: (a) Principal acknowledges that all Good Faith Estimates must be issued in accordance with the Real Estate Settlement Procedures Act; (b) Principal acknowledges that if Agent, as the mortgage lender, accepts the loan package with the Good Faith Estimate as provided by Principal, and absent changed circumstances as outlined by the Real Estate Settlement Procedures Act, Principal and Agent, as the mortgage lender, will be bound by the terms and estimates stated to the applicant in the Good Faith Estimate if the applicant accepts the Good Faith Estimate; (c) Principal acknowledges that if the actual settlement costs and fees associated with the closing of a mortgage loan are out of tolerance at closing, according to the applicable tolerance limitations in place at the time of closing and according to applicable rules and regulations promulgated under the Real Estate Settlement Procedures Act, then Agent may be responsible under such regulations to correct and cure any such tolerance violations to the borrower within thirty (30) days of the closing date; (d) Principal further acknowledges that, in consideration of Agent's responsibility to correct and cure tolerance violations associated with quoted fees on the Good Faith Estimate as described above, Principal shall, at Lender's election, either (i) make such tolerance corrections out of proceeds to be received by Principal in connection with the applicable loan, or (ii) Principal shall reimburse Agent for any such tolerance violations at the closing of each such loan requiring such tolerance cure or upon Agent's later demand.

**26. Miscellaneous.**

**a. Notices.** Any notice or demand which is required or permitted to be given by any party under this Agreement shall deem to have been given if either (i) personally served, or (ii) sent by prepaid, certified mail, addressed to the party at its address set forth below; or (iii) in such other manner as the parties may agree in writing:

If to AGENT:  
Mortgage Services III, LLC  
**502 N. Hershey Rd.**  
**Bloomington, IL 61704**

If to PRINCIPAL:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Each party may change its address for notices by providing written notice thereof to the other party.

**b. Entire Agreement/Amendment.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations, and understandings of the

parties. No modification or amendment of this Agreement shall be binding unless executed in writing by all the parties hereto. **c. Counterparts.** This Agreement may be executed simultaneously in any number of counterparts. Each counterpart shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

**d. Waivers/Non-Cumulative Remedies.** Failure or delay on the part of either party to exercise any right provided for herein shall not at as a waiver of any right hereunder, nor shall any single or partial exercise of any right of any party 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 provision, or shall constitute a continuing waiver, unless such waiver is in writing and executed by the party making the waiver. All the remedies provided herein are deemed cumulative and nonexclusive.

**e. Survival.** All of the representations, warranties, covenants and obligations made herein by the parties hereto shall survive and continue in effect after the termination of the Agreement of the consummation of the transactions contemplated by the Agreement.

**f. Governing Law; Jurisdiction.** THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, EXCEPT TO THE EXTENT PREEMPTED BY FEDERAL LAW. PRINCIPAL CONSENTS TO THE NON-EXCLUSIVE JURISDICTION AND VENUE OF THE STATE COURTS OF ILLINOIS AND THE FEDERAL COURTS AS TO ANY DISPUTE CONCERNING THIS AGREEMENT.

**g. Attorneys' Fees.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or in connection with any dispute related thereto, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in such proceeding, in addition to any other relief to which such party may be entitled.

**h. Dispute Resolution.** Any dispute arising out of or relating to this Agreement, including the breach, termination or validity thereof, shall be finally resolved by arbitration by three arbitrators in accordance with the CPR International Institute for Conflict Prevention and Resolution Rules for Non-Administered Arbitration. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof. Arbitration proceedings shall take place in the city of the responding party's location. Except as may be required by law, neither party nor any arbitrator may disclose the existence, content, status or results of any arbitration hereunder without the prior written consent of both parties. The procedures specified in this section shall be the sole and exclusive procedures for the resolution of disputes between the parties arising out of or relating to this Agreement; provided, however, that a party may file a complaint to seek a preliminary injunction or other provisional judicial relief to protect such party's intellectual property rights, confidential information, or customer information. Despite such action the parties will continue to participate in good faith in the procedures specified in this section. Each party will bear their own expenses for any actions arising under this Section.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date indicated above.

AGREED:

**Mortgage Services III, LLC, AGENT**

By: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

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

\_\_\_\_\_, **PRINCIPAL**

By: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

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