



Loan Officer Agreement

THIS LOAN OFFICER AGREEMENT is entered into this _____ day of _____, 200____ (“Loan Officer Start Date”), and is made in New York, by and between Coldwater Canyon Capital, LLC d/b/a/ TLC Lending, (“TLC”) and _____ (“Loan Officer”). TLC and Loan Officer may be collectively referred to hereafter as the "Parties".

RECITALS

- A. WHEREAS, TLC is a licensed mortgage broker and banker, and is in the business of negotiating and making first and second lien residential mortgage loans (hereafter "Loans") to qualified persons.
- B. WHEREAS, it is the desire of TLC to employ and the Loan Officer to be employed to originate loans and to have a uniform agreement establishing the terms of employment including responsibilities, compensation, benefits, severability and termination.
- C. WHEREAS, Loan Officer accepts employment with TLC upon the terms and conditions contained in this Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants herein contained, together with other good and valuable consideration, it is agreed that the following is fair and equitable and TLC thereby employs Loan Officer and Loan Officer accepts said employment, the parties agree to the following terms and conditions:

SECTION 1: PRELIMINARY MATTERS

- 1.1 **At Will Employment:** Loan Officer shall be an "at will" Loan Officer of TLC, meaning that either you or the TLC can terminate the employment relationship at any time, for any reason, with or without cause and with or without notice.
- 1.2 **Term of Agreement:** The term of this Agreement shall commence on the Loan Officer Start Date and shall stay in full force until the Agreement is terminated by either party as described herein. (“Term”). Moreover, this agreement shall supersede any previous agreement and is in no way an employment contract and does in no way guarantee or promise a specific period of employment.
- 1.3 **Compliance with Law:** Loan Officer represents and warrants that Loan Officer is knowledgeable of federal, state and local laws and regulations regarding the mortgage brokerage and banking business and Loan Officer agrees to strictly adhere to such laws and regulations at all times as they relate to the business contemplated by this Agreement.
- 1.4 **Conflicting Agreements:** Loan Officer shall not directly or indirectly:
 - a) Own any interest or otherwise participate in any business which is in competition with TLC during the term of this Agreement.
 - b) Render any service of compensation or which would materially interfere with the performance of Loan Officers duties under the Agreement.
 - c) Loan Officer acknowledges that it is against banking regulations for Loan Officer to act as an originator for more than one TLC simultaneously (“Dual Capacity”).
- 1.5 **No representation by TLC:** TLC makes no representations or warranties concerning the likelihood of Loan Officers success or Loan Officer anticipated income.

SECTION 2: FIELD OPERATIONS

- 2.1 Field: Loan Officer shall conduct business in the field under the names of TLC Lending, TLC Funding, or Coldwater Canyon Capital, where applicable. Loan Officer shall operate under all TLC rules, conditions, policies, and regulations (collectively "Policies") currently in force and as may be amended and revised from time to time by TLC. Loan Officer shall conduct all business under all laws, regulations, directives and restrictions ("Laws") by all local, state and federal governmental agencies with jurisdiction over the Program. ("Governing Agencies"). Loan Officer represents and warrants that Loan Officer is familiar with and will abide by all Laws and all Policies, including but not limited to those contained in the TLC Loan Officer handbook. Loan Officer recognizes that, Loan Officer shall not originate, fund, process, or broker any loans, in any state in which TLC is not licensed, or in states that the Loan Officer does not hold proper license or registration as required by state law.
- 2.2 Due Diligence: Loan Officer shall devote all of the Loan Officer's professional time, attention, and due diligence to the origination of Loans in order to produce quality loans for the benefit of, and that meet the standards of TLC and its lenders. Loan Officer represents and warrants that all information and documents presented to TLC or designated lenders will be complete, accurate and true. Loan Officer may not engage in any other professional activities relating to the origination of residential mortgage loans.
- 2.3 Complaints: Loan Officer shall immediately report in writing to TLC any complaints, both verbal and written, notices, lawsuits, investigation and the like which involve Loan Officer, TLC, TLC personnel, Loans, loan applicants, borrowers or lenders.

SECTION 3: RESPONSIBILITIES

- 3.1 Loan Officer: Loan Officer's primary scope of responsibility is the solicitation, and origination of Loans through TLC or TLC designated lenders, in order to produce Loans for the benefit of, and that meet the standards of TLC.
- 3.2 Loan Officer Status: Loan Officer shall be responsible for but are not limited to the following:
- a) Taking information from the borrower and filling out the application;
 - b) Analyzing the prospective borrower's income and debt and pre-qualifying the prospective borrower to determine the maximum mortgage that the prospective borrower can afford;
 - c) Educating the prospective borrower in the home buying and financing process, advising the 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 VOE's (verifications of employment) and VOD's (verification of deposits);
 - f) Initiating / ordering requests for mortgage and other loan verifications;
 - g) Initiating / ordering appraisals;
 - h) Initiating / ordering VOE's (verifications of employment) and VOD's (verification of deposits);
 - i) Initiating / ordering requests for mortgage and other loan verifications;
 - j) Initiating / ordering appraisals;
 - k) Initiating / ordering inspections or engineer reports;

- l) Providing disclosures (truth in lending, good faith estimate, others) to the borrower;
- m) Assisting the borrower in understanding and clearing credit problems;
- n) Maintaining regular contact with the borrower, realtor, lender, between application and closing to appraise them of status of the application gather any additional information as needed;
- o) Ordering legal documents;
- p) Determining whether the property is in a flood zone or ordering such service; and
- q) Participating in the loan closing.

SECTION 4: PROHIBITED ACTIVITIES

4.1 **Banking:** Loan Officer shall not, either directly or indirectly, either alone or in conjunction with others:

- a) Open any bank, savings, or investment account in the name of TLC.
- b) Deposit, cash, endorse, transfer or negotiate any check, draft or other payment made payable to or intended for TLC.
- c) Accept any wire transfers intended for TLC.
- d) Loan Officer acknowledges that depositing, cashing, transferring or negotiating any check, draft or other payment made payable to or intended for TLC is a criminal offense and may be punished by civil and criminal fines and incarceration.
- e)

4.2 **Contracting:** Loan Officer shall not enter, and does not have the authority to enter, into any contract or agreement on the behalf of TLC or to bind or obligate TLC in any manner. Loan Officer shall not undertake any activities or make any representations which imply that Loan Officer has the authority to bind or obligate TLC.

4.3 **Advertising /Telemarketing:** TLC reserves the right to approve of any and all advertising/telemarketing engaged in and or distributed by Loan Officer, and Loan Officer agrees not to engage in any such activity without the written consent of TLC. Loan Officer also agrees not to host or create any Internet web site without the written consent of TLC. Loan Officer acknowledges that the violation of this Section 4.5 is a material breach of this Agreement by Loan Officer

4.4 **Other Prohibited Activities:** Along with the prohibited activities listed in this Section 4, Loan Officer also recognizes other prohibited activities include but are not limited to any conduct which violates the Laws, fraud, dishonesty, and any conduct which violates TLC's policies and procedures.

4.5 **Survival of Obligations:** This agreement shall be interpreted to the laws of the State of New York and to the maximum extent allowed by law; all of the terms and conditions of this Section 4 shall survive the termination of this agreement.

SECTION 5: SOLICITATION, DISCLOSURE, COMPETITION

5.1 **Non-Solicitation Provisions.** Loan Officer covenants and agrees that all those who have been customers of the TLC at any time during the time Loan Officer has been employed by the TLC, and any person that contacted or was contacted by the TLC, whether or not through Loan Officer's efforts, during the time prior to Loan Officer's termination of employment with the TLC, shall all be deemed to be Customers of the TLC ("Customers").

5.1.1 For a period of one year after Loan Officer ceases to be employed by the TLC, plus any additional time that Loan Officer is in breach of this paragraph, Loan Officer will not, directly or indirectly, as a shareholder, partner, member, officer, director, Loan Officer, consultant, agent, representative, or in any other capacity: (1) solicit business from any unless the TLC is no longer in such business in the geographical area in which such customer lives; (2) request or advise any individual that was a Customer at any time

during Loan Officer's employment, to cancel or otherwise reduce its business with the TLC; or (3) induce or attempt to influence any Loan Officer of the TLC to terminate his or her employment with the TLC. This includes TLC, and any affiliates, subsidiaries, corporate parents, or divisions; it now has or may have during the time covered by this agreement. Prior to accepting employment with another employer following the termination of Loan Officer's employment with the TLC, for any reason, Loan Officer shall disclose to such future employer the provisions of this paragraph, and the following two paragraphs concerning non-competition and non-disclosure.

5.2 Non-Disclosure Provisions. Loan Officer recognizes that during his or her employment he or she acquires and will continue to acquire confidential information. He or she shall maintain the confidential status of all confidential information until it has been made publicly available by or on behalf of the TLC; shall not at any time during or after his or her employment with the TLC, which time is not limited by the duration of any non-competition provisions of this Agreement or any other agreement between the Loan Officer and the TLC, use any confidential information for his or her own benefit or for that of anyone other than the TLC, or reveal any other confidential information to persons not authorized in writing by the TLC to receive confidential information; and shall take all reasonable steps necessary to prevent unauthorized parties, including those employed by the TLC, from obtaining confidential information.

5.2.1 Loan Officer acknowledges, agrees and admits that (1) confidential information derives independent economic value from not being generally known and from not being readily ascertainable by proper means by other persons who can obtain other economic value from its disclosure or use; and (2) as used herein, "confidential information" means information learned by Loan Officer because of or through his or her employment by the TLC (including information about the TLC and information developed by the Loan Officer), not know to the general public, about the TLC's products, processes, services and Customers.

5.2.2 This information includes the names of Customers and potential customers and information about those customers including the usefulness to them of the products or services of the TLC, records of their purchases of the TLC's products or services, and evaluations of their need for the TLC's products or services, and the details (including termination dates) of any mortgage placed with the TLC. It also includes any and all records, trade secrets, projections, plans, marketing information, methods, financial statements, memoranda, costs data, notes and any other data or information (oral or written) relating to the past present or future activities of the TLC.

5.3 Non-Competition. Loan Officer shall not, either directly or indirectly, alone or in participation with others, engage in any activity which directly or indirectly competes with TLC or which has a negative impact upon TLC, either financially or operationally. The Loan Officer recognizes that Coldwater Canyon Capital, LLC d/b/a TLC Lending (TLC) is engaged in the business of selling, marketing and dealing in the mortgage and financial markets and all related services in states in which it is licensed and that it is of significant importance to TLC to maintain the confidentiality of its Proprietary Information and preserve the good will of its business. The Loan Officer recognizes that he or she will, during the course of their employment, obtain Proprietary Information and goodwill, the Loan Officer understands that it is a condition of his or her employment not to compete with TLC, in the United States or any other country, for a period of time following the termination of his or her employment, as set forth in further detail below.

5.3.1 The Loan Officer agrees that for a period of one (1) year following the termination of his or her employment, he or she will not directly or indirectly, for his or her own account or for any other person, as agent, Loan Officer, officer, director, trustee, consultant, owner, partner or shareholder, or in any other capacity, in a geographic are of fifty (50) miles of the Loan Officer's residences during the term of employment with TLC:

- (i) hire or attempt to hire or assist any other person in hiring or attempting to hire any Loan Officer of TLC; or
- (ii) encourage or assist any other person in encouraging any director, officer, Loan Officer, agent, consultant or any other person affiliated with TLC to terminate or alter his or her or its relationship with TLC; or

- (iii) encourage or assist any other person in encouraging any customer or supplier of TLC to terminate or alter its relationship with TLC; or
- (iv) sell or market or assist any other person in selling or marketing any product or service that competes, directly or indirectly with any product or service marketed, sold or under development by TLC at the time the Employment with TLC is terminated; or

5.3.2 In order to assure that the Loan Officer does not breach any of the foregoing provisions the Loan Officer agrees that for a period of one (1) one year following the termination his or her Employment he or she will not accept employment with, advise, provide consulting services to or acquire any interest in (other than an investment interest of less than 5 percent of the total outstanding shares of a publicly traded TLC) any business that directly or indirectly competes with any product or service conceived, manufactured, sold or under development by TLC without first obtaining the written consent of TLC. TLC shall be permitted to withhold such consent in its sole discretion, unless the Loan Officer and the prospective employer are able to provide TLC with assurances reasonably satisfactory to TLC in its sole discretion that the Loan Officer will not be assisting the prospective employer in any of the prohibited endeavors listed in paragraph (a) above.

SECTION 6: PROTECTED INFORMATION

6.1 Use of Name: Loan Officer recognizes TLC's ownership of the service marks and trade names "TLC Lending", "Total Loan Care", "TLC Funding" and "Coldwater Canyon Capital" and that the TLC's service mark is famous for purposes of the Federal Trademark Dilution Act and all applicable state and federal anti-dilution laws. During the term of this agreement only, Loan Officer may use the name "TLC Lending", "TLC Funding", and "Total Loan Care" or "Coldwater Canyon Capital" the name permitted in each state to the extent the Loan Officer is acting as an authorized representative of the TLC or authorized TLC business. This also includes TLC owned web sites, domain names and URLs.

Following the termination of this agreement, Loan Officer shall not use for any purpose whatsoever either alone or in conjunction with others, either directly or indirectly:

- a) The name "TLC Lending" or anything similar to the name "TLC Lending"
- b) The name "Total Loan Care" or anything similar to the name "Total Loan Care"
- c) The name "TLC Funding" or anything similar to the name "TLC Funding"
- d) The name "Coldwater Canyon Capital" or anything similar to the name "Coldwater Canyon Capital"

6.2 Survival of Obligations: This agreement shall be interpreted to the laws of the State of New York and to the maximum extent allowed by law; all of the terms and conditions in Section 5 shall survive the termination of this agreement.

SECTION 7: COMPENSATION

7.1 Commission: Provided the Loan Officer is in good standing and has not violated any of the terms or provisions of this agreement and the Loan Officer is listed on the Universal Mortgage Application (Form 1003) from which commissions are sought, TLC shall compensate Loan Officer as follows:

6.1.1 Loan Officer shall receive a _____ payout commission based on the Net Commission Income. The Net Commission Income is defined as the sum of yield spread premium, origination fee and fee overage ("Gross Loan Income") adjusted for mandatory charges, waivers, shortages, and subsidies ("Other Adjustments") allocated to or by the Loan Officer less operational fee. (See section 7.1.7).

- 6.1.2 Fee overage is defined as any dollar excess of mandatory fees.
- 6.1.3 Each Loan Officer will be charged an operational fee of \$500 per loan.
- 6.1.4 Each Loan Officer will receive a minimum payout of \$250 per loan, but only if all mandatory fees are collected.
- 6.1.5 Each Loan Officer may waive fees or subsidize any of their loans at the own expense. Adjustments will be made on a 1:1 ratio or dollar for dollar against commissions earned for that loan.
- 6.1.6 Each Loan Officer must collect a minimum of 1% of the loan amount either through yield spread premium or discount fee, origination fee or broker fee. Any amount below the minimum must have prior approval from senior management.
- 6.1.7 Each Loan Officer is required to collect the following mandatory charges. All mandatory fee may be charged to the borrower:

Broker Fee	\$500
Application Fee	\$395
Courier	<u>\$ 88</u>
Total Fees	<u>\$983</u>

If any of the above fees remain outstanding and uncollected after closing, the Loan Officer's commission will be reduced by that amount.

Commission Example:

Gross Loan Income	\$4,000.00
Broker Fee	(\$500.00)
Application Fee	(\$395.00)
Courier Fee	(\$88.00)
Total Income on Loan	\$3,017.00
Operational Fee	(\$500.00)
Other Adjustments	(\$0.00)
Net Commission Income	\$2,517.00
Payout @ 50%	\$1,258.50

- 6.1.8 The Commission shall be earned by Loan Officer on a per loan basis only when Loans have closed, funded and TLC has been paid in full by the lending investor ("Funded Loans").
- 6.1.9 The Loan Officer will be paid commission on Funded Loans on the 15th and the 30th day of each month ("Commission Payable Date"). If the Commission Payable Date falls on a holiday or weekend, the next business will be the payable date. Commissions will be paid in the Current pay period if the Funded Loan occurs prior to the Payroll Cutoff Date.
- 6.1.10 TLC reserves the right to change, adjust or alter this Commission and Mandatory Fee Schedules without notice.
- 6.1.11 The Loan Officer may enroll in TLC's group medical/dental insurance, disability/life insurance, and 401K retirement program upon completion of 90 days of service. TLC contributes \$150 toward these costs and currently does not match the 401K plan.
- 6.1.12 Should subsequent quality control by either TLC or its lenders and agencies reveal any fraud, misrepresentation or gross negligence regarding a loan's processing, qualification or documentation. TLC will not pay any commission on the loan and the Loan Officer may be subject to termination.

7.2 Payment to Terminated Loan Officers:

- a) If Loan Officer resigns, or TLC terminates the Loan Officer's employment, all non-Funded Loans of Loan Officer shall be assigned to Loan Officer's direct supervisor. The assigned supervisor shall complete the pending transaction and be compensated accordingly, at the discretion of TLC. Such compensation shall be deducted from the Loan Officer's Commission, if any.
- b) Notwithstanding 6.2 (a) above, no Commission shall be due Loan Officer if i) a loan close after thirty (30) days following the termination of this agreement, or (ii) if Loan Officer is terminated for cause, as defined in Section 8.1.
- c) In the event of termination for cause, no severance nor any further compensation nor any further compensation or commission will be paid for those loans which settle after date of termination. Any outstanding draw that has been paid to the Loan Officer in excess of the commissions earned as of the date of departure must be reimbursed to TLC immediately, unless TLC decides in its sole discretion to arrange for payment over a period of time.

7.3 Withholding: Loan Officer's commissions shall be paid by either a 1099 schedule, where applicable by state law, or by a W-2 schedule, withholding all applicable payroll taxes including FICA, FUTA and other customary withholdings.

SECTION 8: LOAN OFFICER DECLARATIONS

8.1 Declarations: Loan Officer declares and warrants for the benefit of TLC that:

- a) Loan Officer has never been convicted of any felony or any crime involving fraud, theft or moral turpitude.
- b) Loan Officer has never been investigated, fined, or disciplined by any Governing Agencies, for fraud, theft, or acts of dishonesty.
- c) Loan Officer has never had an employer terminate Loan Officer's employment for acts of fraud, theft, harassment, violations of the Consumer Credit Protection Act, Laws or RESPA.
- d) All statements made to TLC in connection with Loan Officer's employment have been truthful.
- e) Loan Officer shall represent TLC fully and unconditionally, against any claim, demand or lawsuit filed against TLC.
- f) Loan Officer acknowledges that TLC is an equal opportunity lender, and Loan Officer will not discriminate against any applicant on the basis of race, religion, national origin, sex, marital status, familial status, disability, age, or color, applicants receipt of income derived from any public assistance program, and the applicants exercise, in good faith, of any rights applicant may have under the Consumer Credit Protection Act or Laws.
- g) Loan Officer acknowledges that all applicants will be treated in a non-discriminatory manner which complies with the provisions of the Fair Housing Act, the Equal Credit Opportunity Act and Laws
- h) All 1099 Loan Officers shall have appropriate licenses and registrations as required by state law and must be in good standing.
- i) Loan Officer acknowledges that the Loan Officer is a Loan Officer of TLC whether or not the Loan Officer is classified as a 1099 Loan Officer or W-2 Loan Officer. A 1099 Loan Officer shall not conduct business or represent to third parties that Loan Officer is an independent contractor.

SECTION 9: TERMINATION

8.1 Termination: TLC employs Loan Officer on an at-will basis. Thereby TLC may terminate this agreement without prior notice at any time with or without cause as allowed by the Laws.

Any initial compensation deemed as non-recovered per Section 6.1 of this agreement, or subsequent non-recovered draw granted a Loan Officer within the twelve (12) months prior to termination with or without cause, will be recovered from any commissions due.

TLC may at any time terminate this agreement for "cause" which shall be defined as:

- a) any breach of this agreement by Loan Officer;
- b) conviction of Loan Officer of any crime other than minor traffic offenses.
- c) any act of fraud or misrepresentations in connection to the origination, processing, or funding of a loan.
- d) personal dishonesty or breach of a fiduciary duty involving personal profits;
- e) willful continuing misconduct or intentional failure to perform duties as directed by TLC policies and procedures or TLC management;
- f) willful violation of any law, rule or regulation which violation is detrimental to the business and affairs of TLC; and
- g) willful conduct or behavior that violates any applicable governmental rules or regulations relating to the mortgage banking business (including, but not limited to HUD and VA, Mortgage Banker's Association Canon of Ethics).

8.1.1 In the event that the Loan Officer breaches or violates any term or condition of this agreement or is unable to perform the duties set forth herein for any reason, or otherwise acts in a manner inconsistent with the obligation to be a faithful Loan Officer of TLC, TLC may thereupon terminate employment without notice.

8.1.2 Upon termination, with or without cause, all loans produced by the Loan Officer, will be the sole and exclusive property of TLC.

SECTION 10: INDEMNITY

10.1 Loan Officer bears and is responsible for the Loan Officer's own costs, expenses, income taxes, insurance and the like. Loan Officer agrees to defend, indemnify and hold TLC harmless in the event that a third party pursues any claims or causes of action against TLC based upon any agreements made by the Loan Officer and which said third party claims to be binding upon TLC. This agreement to defend and indemnify TLC includes a duty to pay the reasonable attorney's fees of TLC.

SECTION 11: MISCELLANEOUS

11.1 Neither of the parties hereto shall do nor say anything to unlawfully injure the business or property of the other.

11.2 This agreement, as well as the Loan Officer Handbook, constitutes the sole and complete agreement between the Loan Officer and TLC. No verbal or other statements, inducements or representations have been made to or relied upon by the Loan Officer, and no modification hereof shall be binding upon TLC unless in writing and signed by an authorized representative of TLC.

11.3 All notices required or permitted to be given hereunder shall be in writing and addressed as follows:

Coldwater Canyon Capital, LLC
115 E. 86th Street, Suite PH
New York, NY 10028
Attn: Lawrence A. Spera

SECTION 12: SEVERABILITY, GOVERNING LAW

- 12.1 In the event that any provision of this agreement is deemed invalid or unenforceable in any jurisdiction, then such provisions or portions shall be considered separate and apart from the rest of this agreement. The remainder of this agreement shall remain in full force in such jurisdiction and shall be liberally construed in order to effectuate the purpose and intent of this agreement and shall not affect the durability or enforceability of this agreement or such provision in any other jurisdiction.
- 12.2 This agreement contains the entire agreement between Loan Officer and TLC with regard to the subject matter hereof. This agreement may not be amended, or waived by the party against whom such amendment or waiver is charged.
- 12.3 This agreement shall be governed and construed in accordance with the laws of the State of New York. Each of the parties hereto contents to the jurisdiction of the Supreme Court of New York for all purposes in connection with this agreement, and for all actions arising therefrom.
- 12.4 Nothing herein contained shall be deeded or construed to create a partnership, agency or joint venture between the parties hereto.

IN WITNESS HEREOF, the parties have caused this agreement to be signed on the day and year first written.

Loan Officer

Coldwater Canyon Capital, LLC

Name

Lawrence A. Spera, Managing Member and
Chief Executive Officer