



## CORRESPONDENT LENDER AGREEMENT (Delegated)

**THIS CORRESPONDENT LENDER AGREEMENT** (this “**Agreement**”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”) by and between Mortgage Solutions of Colorado, LLC, a Colorado limited liability company d/b/a Mortgage Solutions Financial and MSF Agriculture (“**MSF**”), having its principal place of business at 7450 Campus Dr., Suite 200, Colorado Springs, CO 80920, and \_\_\_\_\_, a \_\_\_\_\_ (i.e., corporation, LLC, Bank, etc.) (“**Correspondent**”), having its principal place of business at \_\_\_\_\_.

Throughout this Agreement, MSF and Correspondent may be referred to collectively as the “Parties” or each individually as a “Party.”

### RECITALS

**WHEREAS**, MSF is engaged in the business of originating, purchasing and selling mortgage loans;

**WHEREAS**, Correspondent is engaged in the business of originating, processing, closing and selling residential mortgage loans;

**WHEREAS**, MSF desires from time to time to purchase from Correspondent, and Correspondent desires to sell, one-to-four family, first lien residential mortgage loans (individually, a “**Loan**”) made to individual borrowers (individually, a “**Borrower**”), closed in Correspondent’s name, on a servicing released basis, and upon such terms and conditions as set forth in this Agreement and in MSF product guidelines, rate sheets, correspondent manuals and written updates provided by MSF and amended from time to time and are incorporated herein as if set forth at length;

**NOW, THEREFORE**, in consideration of the above recitals and the mutual covenants and agreements contained herein, and intending to be legally bound, the parties do hereby agree as follows:

#### 1. TERM

This Agreement shall be effective as of \_\_\_\_\_ (the “**Effective Date**”) and shall continue until terminated by either party.

#### 2. TERMINATION

- (a) This Agreement may be terminated by either party without penalty or cause upon 30 days’ written notice to the other party. Termination shall not affect the obligations of Correspondent within. Termination shall not affect the obligations of Correspondent with respect to Section 3(f), 4, 5, 7, 8, 9, 20 and the Confidentiality and Non-Disclosure Agreement contained in Exhibit A of this Agreement.
- (b) In addition, MSF shall have the right to terminate this Agreement immediately by notice

in writing to Correspondent in the event of any of the following:

- i. Correspondent defaults in any of its obligations under this Agreement or any other agreements between Correspondent and MSF or any of its affiliates, and such default is not cured within fifteen (15) business days after notice to Correspondent of such default;
  - ii. Correspondent fails to deliver acceptable Loans to MSF, under the terms and conditions of this Agreement and any correspondent manual produced by MSF;
  - iii. Correspondent shall initiate or suffer any proceedings of insolvency or reorganization under the bankruptcy code, or other federal or state receivership laws, or make any common law assignment for the benefit of creditors, or be unable to pay its debts as the same become due;
  - iv. Correspondent assigns or attempts to assign its rights and obligations hereunder without prior approval;
  - v. Correspondent by operation of law becomes unable to faithfully perform its duties pursuant to this Agreement; or
  - vi. MSF suffers any involuntary sale or execution upon any interest in any Loan purchased hereunder and such is the result of any act or omission on the part of Correspondent.
  - vii. Correspondent fails to timely deliver to MSF any documents required to be delivered from time to time.
- (c) Termination shall not affect the obligations of Correspondent with respect to any event occurring before termination.
- (d) Correspondent agrees that in the event of a breach by Correspondent of this Agreement or any other agreement between MSF and Correspondent, or upon the default of Correspondent under any instrument payable to MSF or upon failure of Correspondent to pay any amounts due MSF, MSF shall have the immediate right to set-off from and against any amounts otherwise due or payable to Correspondent.

### **3. SERVICES OF CORRESPONDENT**

- (a) Correspondent is approved for retail and third-party origination business and will use forms acceptable to MSF. Correspondent will promptly submit all information generated pursuant to such application to MSF, or the applicable agency, for its review and approval.
- (b) DELEGATED UNDERWRITING: MSF authorizes Correspondent as a delegated underwriter for certain programs. As such, the Correspondent will be authorized to make credit commitments on behalf of MSF in compliance with applicable law.
- (c) Prior to purchase of the Loan by MSF and after purchase, if required, Correspondent agrees to execute such assignments, endorsements, or other documentation as necessary to transfer ownership of the Loan to MSF and/or such other assignee as may be designated by MSF, concurrent with the closing of such Loan or as MSF may otherwise direct. Correspondent agrees to fully cooperate with, provide and/or assist MSF with any requests for information, follow up requests, adjustments for clerical errors, any or all

loan documentation requests if deemed necessary or desirable in the discretion of MSF; or any other requests related to the administration and/or sale of the Loan.

- (d) Correspondent shall deliver to MSF all Loan documents required by MSF within the applicable time period determined by MSF and the commitment confirmation. MSF reserves the right to reject and not purchase any Loan which does not meet MSF's documentation requirements or is not in accordance with MSF instructions. MSF reserves the right to reject any Loan that is not purchased within thirty (30) calendar days from the Note Date. If the thirtieth (30<sup>th</sup>) calendar day falls on a weekend or holiday, MSF's expiration date will roll back to the immediately preceding weekday. Correspondent must provide the entire closed loan package to MSF within ten (10) calendar days from the Note Date. If the tenth (10<sup>th</sup>) calendar day falls on a weekend or holiday, MSF's expiration date will roll back to the immediately preceding weekday.
- (e) If Correspondent fails to make proper and timely required delivery in connection with any registration or reservation ("registration"), the parties agree and acknowledge that MSF will suffer damages, including, but not necessarily limited to, the decline in market value of the Loan, processing costs, investment losses, obligations to investors to whom a registered Loan has been committed, and legal costs incurred as a result of non-delivery and enforcement of MSF's rights. Correspondent shall be liable for all such damages and other damages incurred by MSF in addition to any other rights, remedies or damages of MSF at law, in equity or under this Agreement.
- (f) All Loans will be purchased in accordance with pricing and options provided by MSF. Any change in pricing policy shall be effective only by written amendment to MSF's Guidelines or notice by MSF to Correspondent.
- (g) All Loans which Correspondent desires to sell to MSF under this Agreement must be registered with MSF. Following acceptance by MSF of a registered Loan, Correspondent shall be obligated to deliver the Loan to MSF in accordance with the terms and conditions of the applicable delivery program and this Agreement.

#### **4. APPLICABILITY OF REPRESENTATIONS AND WARRANTIES**

Each Loan shall be subject to all representations and warranties specified in this Agreement and any future correspondent agreement, irrespective of the provision of any other documents or conduct of the parties with respect thereto, including without limitation, MSF's examination of documents and files. This Agreement shall exclusively govern the rights of the parties hereto despite the fact that the Loan will be subsequent to this Agreement. Each representation and warranty herein shall survive the purchase of a Loan and shall inure to the benefit of MSF, its affiliates, successors and assigns.

#### **5. CORRESPONDENT'S REPRESENTATIONS, WARRANTIES, AND COVENANTS REGARDING LOANS**

Correspondent makes to MSF in connection with each Loan purchased by MSF and with this Agreement, all of the representations, warranties and covenants set herein which representations, covenants and warranties shall be true at the time of registration, at the time of delivery and which shall survive the purchase of each Loan by MSF and shall continue in effect as to each Loan for so long as any amount due from the borrower remains outstanding and unpaid.

- (a) All Correspondent's representations, covenants and warranties herein shall be true at the

time of the execution hereof, as well as at the time of registration of each Loan, at the time of delivery and which shall survive the purchase of each Loan by MSF.

- i. Correspondent is and shall continue to be an entity duly organized and validly existing in good standing in the jurisdiction of its chartering or incorporation, and Correspondent and each of its directors, officers, agents and employees have acquired and will, during the term of this Agreement, maintain all necessary licenses and qualifications to transact its business. Correspondent shall submit to MSF copies of all such licenses as requested by MSF.
- ii. Correspondent has all necessary authority and has taken all required action to enter into this Agreement and to perform the transactions contemplated hereunder.
- iii. The execution and delivery of this Agreement by Correspondent and the obligations which it will perform hereunder do not, and will not, violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination, award or contract having applicability to Correspondent or the articles of incorporation or bylaws of the Correspondent.
- iv. This Agreement constitutes, when duly executed and delivered by Correspondent, a legal, valid, and binding obligation of Correspondent, enforceable against Correspondent according to its terms.
- v. There are no actions, suits, investigations, or proceedings pending or threatened against or affecting Correspondent or the properties of the Correspondent before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which if determined adversely to Correspondent, would have a material adverse effect on the financial condition, properties, or operations of Correspondent or upon Correspondent's ability to perform its duties hereunder. Correspondent shall advise MSF immediately, in writing, of any pending or threatened adverse action, or any pending or threatened action to revoke or limit any license, permit, authorization or approval granted to Correspondent, which is necessary for Correspondent to conduct business.
- vi. Unless prohibited by federal or state regulation, Correspondent has disclosed to MSF all final written reports, actions and sanctions of all federal and state agency reviews, investigations, examinations, audit, actions and sanctions undertaken or imposed within five (5) years prior to the Agreement's effective date.
- vii. Correspondent agrees to make current audited financial statements available to MSF upon request, and in any case within ninety (90) days after the completion of each fiscal year. MSF will rely on these statements as part of its determination of whether to continue to purchase Loans under this Agreement.
- viii. Correspondent agrees it will not use of its own benefit or will not disclose to any person or entity confidential information relating to MSF which it has acquired or which it may acquire during the term of this Agreement, and shall comply with the terms and conditions contained in the Confidentiality and Non-Disclosure Agreement attached hereto as Exhibit A and made part of this Agreement.
- ix. Correspondent has in full force and effect and will continue to maintain a fidelity bond and an errors and omissions policy or policies or mortgage banker's blanket

bond covering all its activities hereunder, and shall provide to MSF on an annual basis or as required by MSF satisfactory evidence thereof.

- x. Correspondent has in full force and effect a written quality control plan updated on a regular basis to reflect regulatory changes and shall provide to MSF upon request.
- (b) To Correspondent's knowledge, as to each loan application or file, Correspondent represents and warrants to MSF and its affiliates, the following:
- i. To Correspondent's knowledge, each document furnished to MSF is complete and accurate and contains no misleading information, has been prepared and executed and copies delivered as required by law, and all signatures and initials therein are authorized and genuine;
  - ii. To the best of Correspondent's knowledge, there is no undisclosed bankruptcy or foreclosure pending or threatened against any prospective Borrower;
  - iii. For each Loan purchased, the Borrower shall have no claims or defenses to the Loan by reason of any act or omission of Correspondent or its directors, officers, employees, agents or contractors;
  - iv. Correspondent has no adverse information concerning the Borrower or the property securing such Loan that can reasonably be expected to cause any governmental, quasi-governmental or private institutional lender or mortgage insurer to regard the transaction as an unacceptable credit risk, cause any approved Loan to become delinquent or adversely affect the value or marketability of the Loan;
  - v. Correspondent, at its own expense, shall furnish to MSF all credit data, financial statements, real estate information and such additional items as MSF may from time to time require. In addition, Correspondent, at its own expense shall perform such other functions as MSF may require to close, fund, and complete the Loan transaction.
  - vi. Correspondent has not made any false, misleading, incomplete statements or omissions to MSF, either in connection with Correspondent's application for approval by Lender or with respect to each loan file submitted to MSF under this Agreement. Subsequent to approval of Correspondent or Loan purchase, MSF may reverify appraisals, credit reports, and other information as it may determine necessary at MSF's expense in order to assure itself of the correctness of information in each Loan file.
  - vii. All loan applications and closed loans submitted by Correspondent to MSF fully comply in all respects with the requirements of this Agreement and the requirements of MSF.
  - viii. Each Loan application package that Correspondent submits to MSF on behalf of the potential borrowers shall be completed and submitted to MSF at the sole and exclusive expense of Correspondent and/or the potential borrowers on whose behalf Correspondent is working. Correspondent, at its own expense, shall furnish to MSF, all credit data, financial statements, real estate information, and such additional items as MSF may from time to time require. In addition, Correspondent at its own expense shall perform such other functions as MSF may require to close, fund

and complete the Loan transaction.

- ix. Correspondent has complied with and all Loans comply with all applicable federal, state and local laws, rules, and regulations, including without limitation, the Truth-In-Lending Act and Regulation Z thereunder; the Dodd–Frank Wall Street Reform and Consumer Protection Act; the Fair Credit Reporting Act; the Equal Credit Opportunity Act and Regulation B thereunder; the Real Estate Settlement Procedures Act and Regulation X thereunder; and State and Federal Fair Lending and Fair Housing Regulations and all other applicable local, state and federal laws, rules and regulations, including but not limited to, all applicable predatory and abusive lending laws. None of the Loans are High Cost as defined by the applicable predatory and abusive lending laws.
- x. Correspondent understands that MSF intends to sell and/or securitize closed loans to investors in the secondary market. Correspondent represents and warrants that in submitting applications or loan documentation to MSF, Correspondent shall not submit in any loan application package any false, fraudulent or erroneous information or statements, or omit any material fact necessary to make any statement or information included in the loan application package true, accurate and understandable and shall immediately, upon learning of the existence of any false, fraudulent or erroneous information or statements, disclose such information to MSF. For purpose of this warranty, the term “submit” shall mean (a) submitting a loan application package or loan documentation to MSF with false, fraudulent or erroneous information, with actual knowledge thereto; (b) submitting a loan application package or loan documentation to MSF with false, fraudulent or erroneous information after failing to follow standard practices and procedures prevalent in the mortgage banking industry which, if followed, would have led to the discovery or disclosure thereof; (c) submitting a loan application package or loan documentation to MSF with false, fraudulent or erroneous information where such information was or should have been within the knowledge or control of Correspondent; or (d) submitting a loan application package or loan documentation to MSF containing an appraisal that contains false, fraudulent or erroneous information where such information was or should have been within the knowledge or control of Correspondent.
- xi. Correspondent understands that MSF is fully committed to the principle and spirit of providing full access to mortgage credit for all persons, regardless of race, color, religion, national origin, sex, age, handicap, familial status or marital status, the fact that part or all of the applicant’s income comes from public assistance or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any other prohibited basis (all such items individually referred to as a “**Prohibited Basis**”). Correspondent represents and warrants that it shall not reject an application because of the location and/or age of the subject property, or in the case of a loan applicant or prospective loan applicant, vary the terms of the application procedure or refuse to accept a loan application because of a Prohibited Basis.
- xii. With respect to each loan application package or loan documents delivered by Correspondent to MSF for a loan intended to be insured by the Federal Housing

Administration (FHA) or guaranteed by the Department of Veterans Affairs (VA), Correspondent represents and warrants that Correspondent: (a) is authorized under applicable FHA/VA regulations to originate an FHA or VA home mortgage loan; (b) has fully complied with all requirements, standards and guidelines under applicable FHA or VA regulations, as amended from time to time, pertaining to loan origination; and (c) has taken no action or failed to take any action, the effect of which would prevent it or MSF from obtaining FHA insurance or VA loan guaranty or which would at any time invalidate, in whole or in part, the FHA insurance or VA loan guaranty on any submitted FHA/VA loan application which is subsequently approved for purchase by MSF.

- xiii. No loan application package or loan documentation submitted by Correspondent shall constitute a Loan transaction which would be subject to coverage under the Home Ownership and Equity Protection Act (HOEPA) or Section 32 of Regulation Z of the Truth-In-Lending Act or which would otherwise be considered a “high cost” loan under applicable state law.
- xiv. Except as otherwise disclosed to MSF in writing before the funding of any loan, Correspondent, its service corporations and other affiliated entities have no direct or indirect ownership interest in any property acting as security for a Loan, or in the loan proceeds themselves.
- xv. The contents of each loan application package submitted to MSF shall become the property of MSF immediately upon submission.

## **6. FEES**

Correspondent may retain, to the extent permitted by the state, federal and local law and the requirements of the applicable investors, a processing fee, an origination fee and all lawful discounts collected in excess of MSF’s quoted price. MSF may withhold, offset, and apply any fees otherwise due and payable to Correspondent to any obligations of Correspondent to MSF. In no event shall any compensation be paid to Correspondent unless a Loan is purchased by MSF or any of its affiliates. MSF has the right to withhold any fees or payments until the Loan file is complete and Correspondent has performed its obligations hereunder.

## **7. ANNUAL REVIEW**

MSF reserves the right to conduct an annual review of Correspondent. Correspondent agrees to follow any MSF requirements during this annual review.

At all times during the term of this Agreement, Correspondent shall maintain on the business premises where the loans submitted to MSF were produced, a complete set of files and records of all business, activities and operations conducted by Correspondent as required by Federal and State lending guidelines and in accordance with MSF’s loan policies and procedures. At all times during the term of this agreement and at all times following the expiration or termination of this Agreement, Lender, its regulators, internal auditors or independent auditors, and its duly authorized agents, representatives or employees have the right to audit, inspect, and copy any of the foregoing records, reports, and related materials of Correspondent.

## **8. INDEMNIFICATION AND REPURCHASE**

- (a) Correspondent agrees that upon the occurrence of any of the following, upon MSF’s

written request, Correspondent shall repurchase, at the Repurchase Price as set forth in the Seller's Guide, any Mortgage Loan sold by Correspondent to MSF, within thirty (30) days of the issuance of the written repurchase request:

- i. MSF determines that Correspondent failed to deliver to MSF any Mortgage Loan Documents required pursuant to this Agreement or the Seller's Guide.
  - ii. The Mortgage Loan is required to be covered by a policy of private mortgage insurance, primary mortgage insurance, FHA/HUD mortgage insurance certificate, or VA guaranty, and is not insured or such insurance has been rescinded or cancelled by the insurer.
  - iii. MSF determines there is any evidence of fraud or misrepresentation in the application, origination, and/or closing of the Mortgage Loan by (a) Correspondent or its employees, directors, officers, agents, vendors, service providers and independent contractors, (b) any third party (including without limitation, sellers, brokers, appraisers, inspectors, or settlement agents), or (c) any Borrower, regardless as to each such category of persons of whether the Correspondent has any knowledge of such fraud or misrepresentation.
  - iv. MSF determines that there exists as to the Mortgage Loan a breach of any representation, warranty, covenant, service of Correspondent or agreement contained in this Agreement or the Seller's Guide, or of any applicable Agency Guideline pertaining to the Mortgage Loan.
  - v. MSF determines that the appraisal submitted as part of the loan file and used by Correspondent to underwrite, originate, or submit the Mortgage Loan is defective, nonconforming, or fraudulent in any way, including but not limited to any failure to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) or the Financial Institutions Recovery and Reform Act of 1989 (FIRREA).
  - vi. There shall be no defense, avoidance, or excuse against Correspondent's obligation to repurchase on the grounds that the mortgaged property underlying any Mortgage Loan is subject to a foreclosure action, or on the grounds that the Mortgage Loan is in payment default, or on the grounds that any condition precedent or mitigative act is required to be undertaken prior to repurchase.
  - vii. Correspondent's obligation to MSF with regard to repurchase shall be ongoing and unending and shall remain in effect after and survive this Agreement and any ultimate disposition (by sale or otherwise) of a loan funded by MSF.
- (b) Upon discovery by Correspondent of a breach of any representation or warranty given as to any individual Mortgage Loan, Correspondent shall give MSF written notice of the same no later than ten (10) days after the date of such discovery. Within thirty (30) days after delivery of such notice of breach Correspondent shall immediately repurchase the Mortgage Loan according to the terms of this Agreement.
- (c) Upon any repurchase of a Mortgage Loan, Correspondent shall also assume all servicing obligations in connection therewith.
- (d) Any determination by MSF or its investor shall be conclusive, non-rebuttable and incontestable as to Correspondent.



(e) Indemnity in lieu of Repurchase

- i. In the event that any Mortgage Loan cannot be repurchased due to either (a) the completion of a foreclosure sale upon the mortgaged property, (b) the effect of any bankruptcy proceeding, or (c) any act by any investor or agency, then Correspondent shall be obligated pursuant to this Agreement to pay within thirty (30) days of MSF's written demand indemnity monies representing one hundred (100%) percent of all losses, damages, costs, and expenses MSF has incurred from said Mortgage Loan, as calculated by MSF in its regular course of business. Nothing provided in this Section shall be construed as giving Correspondent an option to offer or make an indemnity payment as a substitute for or alternative to the repurchase of a Mortgage Loan.

## **9. EARLY PAYOFF POLICY**

In addition to any other remedies available to MSF, the Early Payoff (“EPO”) or Early Payment Default (“EPD”) Policy shall come into effect whenever a loan received from Correspondent is sold to or funded by MSF and that loan pays off or goes into Default within one hundred twenty (120) days of funding, regardless of whether that pay off or pay down is from a refinance by or through MSF as the result of another loan application package submitted by Correspondent, or from a refinance on a loan application package submitted to MSF by or through another broker or lender, or from a non-brokered refinance by any other lender.

In the event that any borrower, within one hundred twenty (120) days of the effective date of the applicable loan transfer, prepays the outstanding balance of the applicable loan in full or the applicable loan is the subject of an EPD, the Correspondent will reimburse MSF any Lender Paid Compensation plus all premium pricing beyond the Lender Paid Compensation on the transaction.

## **10. RELATIONSHIP OF PARTIES**

It is agreed that Correspondent and MSF are not partners or joint ventures, but shall have the status of and act in all matters hereunder as independent contractors. Correspondent shall hold funds collected on account of any Loan in trust for MSF. Correspondent is not an agent or partner of MSF and has no authority and is intended to have no power to create, extinguish, or modify any right, obligation, or liability of MSF to any person whatsoever.

It is expressly understood that, notwithstanding the execution of this Agreement and the covenants and agreements contained herein, MSF may make Loans with or without the assistance of Correspondent and may use the services of other vendors or lenders; and Correspondent may sell mortgage loans to other lenders.

## **11. JURY WAIVER/ATTORNEY FEES AND EXPENSES**

If any legal action or proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach or default in connection with any of the provisions of this Agreement, either party shall be entitled to immediately recover from the other party, its costs, plus reasonable attorneys' fees incurred in such action(s) or proceeding(s) in addition to any other relief to which it may be entitled. Except as expressly provided hereunder to the contrary, each party shall bear its own costs and expenses incurred in connection with the preparation of this Agreement and the performance of the obligations contemplated hereby.

After consultation with counsel and with knowledge of the consequences, Correspondent and MSF

hereby waive all rights to demand a jury trial and agree that all suits shall be heard by a judge only.

**12. WAIVERS/REMEDIES CUMULATIVE**

MSF’s delay or failure to enforce any provision of this Agreement shall not constitute a waiver of that provision or any other provision or agreement with Correspondent. All remedies afforded by this Agreement shall be cumulative and in addition to all other remedies provided herein or afforded by law or in equity.

**13. NOTICES**

Any notices to be delivered under this Agreement shall (a) be made by e-mail, and (b) delivered by overnight or certified mail, return service requested, to the following addresses unless updated by written notice to the other party:

**MSF:**

**CORRESPONDENT:**

Mortgage Solutions of Colorado, LLC

\_\_\_\_\_

Attn: Legal Department

\_\_\_\_\_

7450 Campus Dr., Suite 200

\_\_\_\_\_

Colorado Springs, CO 80920

\_\_\_\_\_

Email: [legal@mortgagesolutions.net](mailto:legal@mortgagesolutions.net)

\_\_\_\_\_

**14. ASSIGNMENT**

Correspondent shall not assign this Agreement or any of its rights hereunder. Neither shall Correspondent delegate any duty hereunder without the prior written consent of MSF. Correspondent acknowledges that MSF may assign any or all of its rights under this Agreement and/or the Related Documents to any of its affiliates upon ten (10) days’ notice to Correspondent.

**15. BROKERAGE**

Correspondent represents and warrants that there are no claims for brokerage commissions or finder’s fees in connection with the transactions contemplated by this Agreement. Correspondent agrees to exonerate, indemnify, and hold harmless the other in respect to any and all losses sustained by the other as a result of liability to any broker or finder on basis of any arrangement made on, or behalf of such party.

**16. CAPTIONS; DEFINED TERMS**

The captions of each section in this Agreement are included for convenient reference of the parties and in no way are intended to define, limit, or imply the obligations of the parties.

**17. ENTIRE AGREEMENT**

The exhibits attached hereto, or material referred to in this Agreement are incorporated by reference into this Agreement. This Agreement and the material referred to herein or executed concurrently herewith constitute the entire Agreement and supersede any and all prior agreements, representations, and understandings of the parties, written or oral. No addendum, supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both parties hereto.

**18. SEVERABILITY**

In the event that any provision of this Agreement conflicts with applicable law, such conflict shall not affect the other provisions of this Agreement which can be given effect without the conflicting provisions, and to this end the provisions of this Agreement are declared to be severable.

## **19. NOTICE TO BORROWERS**

Correspondent shall mail notice of transfer of servicing to the Borrower of each Loan as required by federal law. Such notice shall be in a form acceptable by MSF. Such notice shall be sent through the United States Mail, first class postage prepaid at the Correspondent's expense.

## **20. SOLICITATION**

- (a) Neither Correspondent nor any affiliate of Correspondent shall solicit any Borrower of a Loan for the sale or renewal of insurance with respect to such Loan.
- (b) Neither Correspondent nor any affiliate of Correspondent shall, for a period of one (1) year, take any action to personally, by telephone, by mail or otherwise, solicit the refinancing or prepayment of the Loans by the Borrowers, in whole or in part, without the prior written consent and approval of MSF.
- (c) Notwithstanding anything contained herein to the contrary, for purposes of this Agreement, solicitation shall not be deemed to include general advertisements directed to the public at large and contained in newspapers or other broadcast media.

## **21. GOVERNING LAW AND VENUE**

This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of Colorado.

## **22. MSF WEBSITE**

MSF has developed a process by which approved Correspondents will be able to use a link on the wholesale and correspondent lending website (the "Site"), to get information and status reports on their loans and to lock individual loan commitments online. The Site may only be accessed by using a customer ID, username and password provided by MSF. Correspondent shall designate an Administrator who will have the authority to choose who will have access to the Site and can determine the level of use of the Site for each user, i.e., bulletin board, rate sheet, reports, and/or lock-in capability. Please provide the following information on the Administrator designated by your company:

### **Administrator Information:**

Administrator Full Name: \_\_\_\_\_

Administrator Position/Title: \_\_\_\_\_

Administrator Web Username: \_\_\_\_\_

Administrator Phone #: \_\_\_\_\_

Administrator Email Address: \_\_\_\_\_

As a user of the Site, Correspondent is bound by all of the terms and conditions of its Correspondent Agreement for the Purchase and Sale of Residential Mortgage Loans and the terms and conditions regarding use of this Site including but not limited to any Legal Notice and Privacy Notice referenced at or linked to this Site by MSF. Use of this Site does not provide any guarantee

that MSF will purchase the loan; Correspondent is still required to meet all of the terms and conditions in the Agreement and any correspondent manual for loan purchase.

Correspondent agrees that it is responsible for maintaining the security and confidentiality of the usernames and passwords issued either to the Administrator or those usernames and passwords issued by the Administrator to Correspondent's agents or employees. Correspondent represents and warrants that it will not permit unauthorized individuals to use its usernames and/or passwords to access this Site. Correspondent is responsible for the actions of any individuals using its user names and/or passwords to access the Site and agrees to defend and indemnify MSF against any claims, losses, damages, costs, expenses, fines and other liabilities, including attorneys' fees, arising out of Correspondent's failure to maintain the security and confidentiality of its user names and/or passwords or arising out of the unlawful use of the Site by Correspondent or by any person who obtains access to the Site using Correspondent's user names and/or passwords. Notwithstanding the foregoing, any notices on the Site including, but not limited to Legal Notice and Privacy Notice may be modified pursuant to the provisions contained therein and Correspondent is held to those modifications.

***[SIGNATURE PAGE TO FOLLOW]***

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date and year first above written.

**MORTGAGE SOLUTIONS OF  
COLORADO, LLC**

**CORRESPONDENT**

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Printed

\_\_\_\_\_  
Printed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT A**  
**MUTUAL CONFIDENTIALITY AGREEMENT**

**THIS MUTUAL CONFIDENTIALITY AGREEMENT** (this “**Agreement**”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”) by and between Mortgage Solutions of Colorado, LLC d/b/a Mortgage Solutions Financial (“**MSF**”), and \_\_\_\_\_ (“**Correspondent**”).

Throughout this Agreement, MSF and Correspondent may be collectively referred to as the “**Parties**” or each individually as a “**Party**.” In this Agreement, the Party owning the Confidential Information (the “**Disclosing Party**”) agrees to disclose this information to the Party receiving the Confidential Information (the “**Recipient**”). Each Party may fulfill either role relative to whether they are disclosing or receiving such Confidential Information.

**WHEREAS**, the Parties are prepared to furnish Confidential Information under this Agreement for the purpose of considering a potential transaction between the parties relative to the mortgage banking industry;

**WHEREAS**, due to overlapping business interests and contacts, the Parties may learn from one another, or from principals, the names and telephone numbers of customers, vendors, investors, borrowers, lenders, agents, brokers, banks, lending corporations, individuals and/or trusts, buyers, sellers, and/or other relationships (individually and collectively “**Contacts**”) and the Parties acknowledge, accept, and agree that the identities of Contacts shall be recognized by the other Party as exclusive and valuable contacts of the Disclosing Party.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained in this agreement, and the mutual disclosure of confidential information to each other, the parties agree to the following:

**1.1 Confidential Information.** “Confidential Information” as used in this Agreement means all information relating to the parties or the Transaction disclosed to the Recipient by Disclosing Party, including any business, technical, marketing, financial or other information, whether in electronic, oral or written form, and all memoranda, summaries, notes, analyses, compilations, studies or other documents prepared by Recipient which contain or reflect such information. The contents or existence of discussions or negotiations related to the Transaction will constitute Confidential Information. Confidential Information does not include information that: (i) is or becomes part of the public domain other than as a result of disclosure by Recipient; (ii) becomes available to Recipient on a non-confidential basis from a source other than Disclosing Party, provided that, to the best of Recipient’s knowledge, such source is not prohibited from transmitting such information by a contractual, legal, or other obligation; (iii) was in Recipient’s possession prior to disclosure of the same by Disclosing Party; or (iv) can be shown by Recipient to have been independently developed by its Representatives (as defined below) without access to Confidential Information.

**1.2 Non-Use; Protection & Dissemination of Confidential Information.** Recipient agrees not to use the Confidential Information for purposes other than evaluating the Transaction. Recipient must not disclose the Confidential Information to any other party and will use all reasonable efforts to protect the confidentiality of such information; provided, however, that

Recipient may furnish Confidential Information to those employees, officers, members, managers, directors, agents, consultants and advisors of Recipient (collectively, the “**Representatives**” of such Recipient) who need to have access to such Confidential Information in order to assist Recipient in its evaluation of the Transaction. As a condition to such disclosure, Recipient must inform its Representatives of the confidential nature of the information and will be responsible for any breach of this Agreement by any such Representatives.

**1.3 Ownership & Return.** All Confidential Information is and remains the property of Disclosing Party, and no right or license is granted to Recipient with respect to any Confidential Information. Upon the termination by either party of discussions concerning the Transaction, or sooner if so requested, Recipient agrees to immediately return to Disclosing Party by an officer of Recipient. Nothing in this Agreement obligates Disclosing Party to disclose any information to the Recipient or creates any agency or partnership relation between them.

**1.4 Compelled Disclosure.** If Recipient is requested or required by legal or administrative process to disclose any Confidential Information, Recipient must promptly notify Disclosing Party of such request or requirement so that Disclosing Party may seek an appropriate protective order or other relief. In any case, Recipient will: (i) disclose only that portion of the Confidential Information which Recipient’s legal counsel advises is required to be disclosed; (ii) use its reasonable efforts to ensure that such Confidential Information is treated confidentially; and (iii) notify Disclosing Party as soon as reasonably practicable of the items of Confidential Information so disclosed.

**1.5 Remedies.** Both parties acknowledge that remedies at law may be inadequate to protect Disclosing Party against any actual or threatened breach of this Agreement by Recipient, and, without prejudice to any other rights and remedies otherwise available to Disclosing Party, agree to the granting of injunctive relief in favor of Disclosing Party without proof of actual damages. In the event of litigation between the parties concerning an alleged breach of this Agreement, the non-prevailing party will be responsible for the prevailing party’s costs and expenses in such litigation, including attorneys’ fees. Both parties waive all rights to a trial by jury of any dispute with regard to this Agreement.

**1.6 Transaction.** Both parties agree that unless and until a final, written definitive agreement regarding the Transaction between the parties has been executed and delivered, neither party will be under any legal obligation of any kind whatsoever with respect to the Transaction by virtue of this Agreement, except for the matters specifically agreed to herein. No representation or warranty is made by the Disclosing Party as to the accuracy or completeness of any information provided to the Recipient.

**1.7 Term & Termination.** This Agreement will continue in effect for a period of two years from the date hereof, unless either party terminates it earlier by providing a written termination notice to the other party; provided, however, that if this Agreement is so terminated by either party, this Agreement will continue to apply to any Confidential Information disclosed hereunder prior to the other party’s receipt of the termination notice until the end of the two-year term unless an extension is otherwise agreed to in writing by both parties.

**1.8 Miscellaneous.** This Agreement will inure to the benefit of and will be binding upon the parties’ respective successors and permitted assigns. In the event that any one of the provisions contained in this Agreement should be found to be invalid, illegal or unenforceable in any respect

by a court of competent jurisdiction, the validity, legality or enforceability of the remaining provision contained in this Agreement will not in any way be affected or impaired by such a finding. No waiver of any provisions of this Agreement will be valid unless the same is in writing and signed by the party against whom such waiver is sought to be enforced. A waiver or consent given by either party on any one occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion. This Agreement contains the entire agreement of the parties, supersedes any and all prior agreements, written or oral, between them relating to the subject matter hereof and may not be amended unless agreed to in writing by each party. This Agreement will be governed by and interpreted in accordance with the laws of the State of Colorado.

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

**MORTGAGE SOLUTIONS OF  
COLORADO, LLC**

**CORRESPONDENT**

---

Signed

---

Signed

---

Printed

---

Printed

---

Title

---

Title

---

Date

---

Date